James Edward MacAlpine
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Asheville, North Carolina 28806
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"District Court of the United States"
Western District of North Carolina

James Edward MacAlpine, *Petitioner,*	**Writ of Habeas Corpus Ad Subjiciendum**
Versus	1:18-CV-223 (FDW)
Dennis L. Howell, United States Magistrate Judge; And, Don Gast, Assistant United States Attorney; And, Jennifer Berry, IRS-CI Special Agent. *Respondents.*	

I. Introduction

Comes Now, James Edward MacAlpine ("MacAlpine") with this Writ of Habeas Corpus Ad Subjiciendum (hereafter "Habeas") according to the Course of the Common Law arising under Article I Section 9 of the Federal Constitution and Bill of Rights as lawfully amended by the qualified Electors of the several States and arising under the Northwest Ordinances of 1787. MacAlpine has filed this Habeas into the "**District Court of the United States**"[1] (**"the Court"**) and not ***this Court*** being the United States District Court ("USDC") under 28 U.S.C. § 132.

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[1] The "District Court of the United States" arising under Article III Sections 1 and 2 was not abolished in 1948 when the USDC was created.

This CON is complicated otherwise these Star Chamber techniques and methods being used by Dennis L. Howell, Magistrate Judge ("Howell"), Don Gast, Assistant United States Attorney ("Gast") and Jennifer Berry, IRS-CI Special Agent ("Berry") with each playing their parts to intimidate, install fear and panic in people such as MacAlpine so that MacAlpine will Plea out against insurmountable odds incurring a long incarceration that will be proffered by Gast as the alternative therein bypassing a determination of "probable cause" by an "independent judge of the United States" and having a biased prosecutor going straight to the Grand Jury for an indictment bypassing the "**preliminary examination**" that the IRS and prosecutor can't succeed in as the CON would be exposed.

These Star Chamber tactics are orchestrated and implemented **together** in what is known as *cruel trilemma* techniques and methods of the English Star Chamber to force MacAlpine to Plea Bargain pulling off the CON of Title 26 that is perpetuated upon We the People of *these* United States daily who are in reality "citizens of the several States" domiciled in one of the several States but have been CONNED and Forced into signing up as "citizens of the United States" using the Social Security Act of 1935 in 49 Stat. 620-648, the Public Salary act of 1939

in 53 Stat 574-577 and the Buck of 1940 of 54 Stat. 1059-1061 enacted into positive law in 1947 in 61 Stat. 641-646.

These Star Chamber tactics are accomplished by including a *cover* of a mere "Target Letter" for *an* investigation (an inquisition[2]) of a crime or crimes; but then, you get a Search and Seizure Warrant for already committed crimes to accompany the "Target Letter." Then Berry with no evidence other than a "naked" affidavit presented in an *Ex Parte* Application or hearing withholds the **Affidavit, Attachment A and Attachment B** during the execution of the Search Warrant on **June 29th, 2018**.

Then in a conversation between Gast and MacAlpine six (6) days **later** on **July 5th, 2018**[3] Gast states that MacAlpine needs an Attorney; and, Gast states that he will not disclose the **Affidavit, Attachment A and Attachment B** to MacAlpine unless MacAlpine gets an Attorney as the purpose of the "Target Letter" was not merely to let know MacAlpine that he was under "investigation" but to give MacAlpine time "negotiate" to committing crimes in a Plea Bargain for a better deal than the pending indictment because MacAlpine should know he is in a "real pickle" before the Grand Jury indictment; and, Gast states that the "government" is the **"UNITED STATES OF AMERICA**[4]**;"** and, Gast states refusing to answer in the affirmative if Gast is the "Counsel for the United States of America;" and Gast states as a fact that MacAlpine will be indicted while taking advantage of fear and panic instilled by the Search

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[2] *Laskowski v. Spellingings*, 443 F.3d 930, 941 (7th Cir. 2006).

[3] Evidenced by **Attach 6—Gast Recording**, *infra.*

[4] United States of America is a sovereign body politic. See **Attachment 12, *infra.***

that MacAlpine will be indicted while taking advantage fear and panic instilled by the Search and Seizure Warrant not disclosing that there was already a determined crime by Berry and that the fruits of said crime were being seized.[5]

Then on **July 6th, 2018,** the Case of 1:18-mj-77 is **unsealed magically** but no one including Gast or Berry notifies MacAlpine of this and only by accident by the mere request of a friend on July 30th, 2018 to check in Pacer, does MacAlpine find out that the Case of 1:18-mj-77 was unsealed the **very next day after talking to Gast!** But no one including Gast or Berry notify MacAlpine or mail him the "rest" of the Search and Seizure Warrant.

The fruits of the Search and Seizure Warrant as Berry is not competent to present "facts" for a Probable Cause as it is a CON; and then, Howell, Berry and Gast knowingly use the tried and tested Star Chamber tactics on MacAlpine knowingly and intentionally bypassing a **"preliminary examination" in open court before the pending indictment where the CON would be Exposed.**

As a last resort MacAlpine demands a *bona fide* "preliminary examination" in a "District Court of the United States" by a "Counsel of the United States" before <u>any Grand Jury appearance</u> as it is a forgone conclusion that MacAlpine will be indicted according to Gast remembering that as the USDC has no subject matter or personal jurisdiction arising under Article III Sections 1 and 2, that the "UNITED STATES OF

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[5] In the copy of the Application for a Search Warrant downloaded from Pacer on July 30th, 2018 we find "The basis for the search under Fed. R. Crim. P. 41(c) is *(check one or more)*: **evidence of a crime [is checked];** and, **contraband, fruits of crime, other items illegally possessed [is checked];** and, **property designed for use, intended for use, or used in committing a crime [is checked]; a person to be arrested or person who is unlawfully restrained[IS NOT Checked].**

A. Intro—The Real Truth of the CON Being Used by Howell, Berry and Gast Against MacAlpine that They Do Not Want Exposed in a "preliminary examination."

MacAlpine upon his newly discovery of the CON of the "STATE OF NORTH CAROLINA" ("SONC") and the "UNITED STATES OF AMERICA" a sovereign body politic a/k/a "United States" in using only "civil rights" for "citizens of the United States"[6] while knowingly and intentionally denying MacAlpine his "political rights"[7] as a "citizen of North Carolina" of North Carolina, being one of the several States, therein *flow a fortiori* of denying the "citizens of North Carolina" a "Republican Form of Government" in Article IV Section 4 of the Constitution of the United States and denying the "citizens of North Carolina," *i.e.* denying "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States" in Article IV Section 2 of the "Constitution of the United States." MacAlpine has been extremely patient in his attempt to resolve these Constitutional violations (an overthrowing of our Republic by the SONC and the "UNITED STATES OF AMERICA" a sovereign body politic) and more in the territorial boundaries of North Carolina by the SONC regime but MacAlpine is filing Habeas into the "District Court of the United States" that was not repealed in 1948 court changes, with the establishment of the United States District Court ("USDC") for a bona fide *Habeas Corpus ad subjiciendum* but at this point the "deep state" of the SONC

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[6] First Civil Rights Act is 14 Stat. 26 (1866) codified today in 42 U.S.C. § 1981, § 1982 "All **citizens of the United States** shall have the same right, in every State and Territory, as is enjoyed by **white citizens** thereof to inherit, purchase, lease, sell, hold, and convey real and personal property" and § 1988.

[7] See *Ex parte Virgina*, 100 U.S. 339, 358 *et seq.* (1879)—**Extremely Important**.

bona fide *Habeas Corpus ad subjiciendum* but at this point the "deep state" of the SONC and the "UNITED STATES OF AMERICA" a sovereign body politic is so entrenched that it will probably not self-correct or expose itself.

And further, MacAlpine's has researched the United States Federal Court of Claims (a bona fide Article I Court that is the entry into the United States Federal Circuit Court of Appeals being a bona fide Article III Section Court), wherein the United States Federal Circuit Court of Appeals is the ONLY bona fide Article III Section 1 and 2 Court that was established in 96 Stat. 25-58 (1982) as evidenced in **Attachment 1—Senate Report 96-304 of August 3, 1979 ("Attach 1—Sen.Rpt. 96-304")** will be for the "**United States**" (See Rule 4 United States Federal Court of Claims Rules—Not the "UNITED STATES OF AMERICA" as used in the "District Courts of the United States" since the passage of the Seventeenth Amendment in 1913 and in the new USDCs of 1948 established and codified in 28 U.S.C. § 132 to present); and further; "The Court of Appeals for the Federal Circuit differs from other Federal courts of appeals, however in that **its jurisdiction is defined in terms** of **subject matter rather than geography." See Attach 1—Sen.Rpt. 96-304, pgs. 825-845, especially 832-839.**

And further the SONC and "UNITED STATES OF AMERICA a sovereign body politic a/ka/ "United States" has perpetuated a FRAUD upon the "citizens of North Carolina" while using the Social Security Act of 1935 49 Stat. 620-648—"[E]very **employer** (as defined in Section 907) shall pay for each calendar year an **excise tax, with respect to having individuals in his employ . . ." (pg. 639).** As evidenced in **Attachment 2—Legislative History of Social Security Act of 1935 in 49 Stat. 620-648 in Senate Report No. 628, May 13, 1935 ("Attach 2—Sen.Rpt. No. 628"), pg. 25** "(1) an **income tax upon employees [retirement]**, and (2) **an excise tax upon employers based upon wages [26 U.S.C. § 3402 [Subtitle C]] paid." * * ***

(pg. 46) "Section 901: an annual excise tax is imposed on each employer (as defined in sec. 907) on the privilege of having individuals in his employ."

Then to get the "**individuals**" being "citizens of the United States" defined in 5 U.S.C. § 552a(a)(2) to complete a withholding certificate known was "**W4**" to volunteer for this CON styled "**Election of the employer,**" which is found 26 U.S.C. 3402 [chapter 24. **Collection of Income tax at Source on Wages**] on "**wages**" in **Subtitle C** that precludes any Notice of Deficiencies for **Subtitle C** and all of Title 26, which is found in **26 U.S.C. § 6211—Definition of Deficiency**; and, **26 U.S.C. § 6212—Notice of Deficiency**. Therein to conclusively preclude Title 26 for any and all withholding the "term" definition "means" is in "withholding agents" that are required to **withhold for any tax** is **only for Subtitle A** evidenced in 26 U.S.C. § 7701(a)(16)—**"Withholding agent.--The term "withholding agent" means any person required to deduct and withhold any tax under the provisions of section 1441 [Subtitle A—Non Resident Aliens], section 1442 [Subtitle A—Foreign Corporations], section 1443 [Subtitle A—Foreign Organizations], or section 1461 [Subtitle A Hold Harmless Clause].** That the returns are limited to only **Subtitle A** is found in 26 U.S.C. § 6012—Person required to make returns of **income "(a) General Rule.—Returns with respect to income tax under subtitle A shall be made by the following:"**

And further evidence of **Returns** is only for **Subtitle A** is found in **26 U.S.C. § 6011—General requirement of return, statement, or list**—(e)(3)(C) "**(C) Individual income tax return.**--For purposes of this paragraph, the term **"individual income tax return" means any return of the tax imposed by Subtitle A on individuals**, estates, or trusts."

Then the SONC and "UNITED STATES OF AMERICA" CON couples this with the Buck Act in 54 Stat. 1059-1061 of 1940, pg. 1060 "The term "**income tax**" means

any tax levied on, with respect to, or measured by, net income, gross income, or gross receipts" coupled with the term definition of "**Federal Area** means . . . which is located with the **exterior boundaries of any State shall be deemed** to be a Federal Area located within such State."

Then the SONC and "UNITED STATES OF AMERICA" to bypass the holding of term definition of "**income**" for "**Federal Income Tax**" as held in *Merchants' Loan & Trust Co. v. Smietanka*, 255 U.S. 509 (1921) "profit gained through sale or conversion of capital assets" within the meaning of The Corporation Excise Tax of 1909 (36 Stat. 11, 112) also precluding the Sixteenth Amendment **has receded** as evidenced in *United States v. City and County of Denver*, 573 F.Supp. 686, 687 (D.Col. 1983) "**4 U.S.C. § 106(a). As to "income taxes" [not "Federal Income Tax"], the United States, through the Buck Act, has receded jurisdiction to the states and other local taxing authorities.**" Codification of the Buck Act is found in **4 U.S.C. 104-110** and **Consent to taxation of Federal Employees in 4 U.S.C. § 111**, which of course is Howell, Gast and Berry precluding MacAlpine.

And further evidence of **retrocession to the states** is found in *Annexations of Military Reservation by Political Subdivisions*, 11 Mil. L. Rev. 99, 103 (1961) to wit:

> A **retrocession statute** of major importance was enacted by Congress in 1940. This law, commonly known as the "**Buck Act**", **retroceded to the states** and to their **duly constituted taxing authorities jurisdiction to levy and collect sales, use, and income taxes within federal areas**. The federal government and its instrumentalities were exempted from the operation of the Act.

This **retrocession statue** is found on "**Federal Areas**" for "federal employment" is codified in **5 U.S.C. § 5517—Withholding State Income Taxes** (a) ""[w]ho are **residents of the State** with which the **agreement** is made" for "whose **regular place of Federal employment** is within the **State with which the agreement** is made."

Then in this **CON,** money collected is donated as a "**gift or bequest"** to the United States as evidenced in **31 U.S.C. § 321(d)(2) "For purposes of the Federal income, estate, and gift taxes, property accepted under paragraph (1) shall be considered as a gift or bequest to or for the use of the United States."**

This **Complex CON is being perpetuated upon MacAlpine by the SONC** and the **"UNITED STATES OF AMERICA" by Star Chamber tactics, which MacAlpine finds himself entangled within this WEB of FRAUD and DECEIT using only the "civil rights" of "citizens of the United States" precluding MacAlpines's "political rights" for "citizens of the North Carolina" with North Carolina being one of the several States.** This overview demonstrates the extremely difficult task to document the CON by the "UNITED STATES OF AMERICA" in conjunction with the SONC.

a. Legislative History Memorandum.

In *Blum v. Stenson*, 465 U.S. 886, 896 (1984) "Where, as here, resolution of a question of federal law turns on a statute and the intention of Congress, we look first to the statutory language and **then to the legislative history** if the statutory language is unclear." See also *Toibb v. Radloff*, 501 U.S. 157, 162 (1991): *Public Employees Retirement system of Ohio v. Betts*, 492 U.S. 158, 185 (1989); *Oklahoma v. New Mexico*, 501 U.S. 221, 234 FN5 (1991).

In *Heinzelman v. Secretary of Health and Human Services*, 98 Fed.Cl. 808, 816 (2011),

to wit:

> **Statutory interpretation begins with the plain meaning of the language of the statute.** *St. Paul Fire & Marine Ins. Co. v. Barry,* 438 U.S. 531, 547, 98 S.Ct. 2923, 57 L.Ed.2d 932 (1978) ("The starting point in any case involving construction of a statute is the language itself."). **If "the language is clear and fits the case, the plain meaning of the statute will be regarded as conclusive."** *Norfolk Dredging Co. v. United States,* 375 F.3d 1106, 1110 (Fed.Cir.2004). **"When the language of the statute is not clear, canons of construction may be used to determine the meaning of the statute, if possible."** *Cherokee Nation of Okla. v. United States,* 73 Fed.Cl. 467, 476 (2006). One such fundamental canon of statutory construction is that **"the words of a statute must be read in their context and with a view to their place in the overall statutory scheme."** *Davis v. Mich. Dep't of Treasury,* 489 U.S. 803, 809, 109 S.Ct. 1500, 103 L.Ed.2d 891 (1989). Additionally, **if the statutory language is unclear, the Court will look to the legislative history of the statute**. *See, e.g., Blum v. Stenson,* 465 U.S. 886, 896, 104 S.Ct. 1541, 79 L.Ed.2d 891 (1984); *Allen v. Principi,* 237 F.3d 1368, 1375 (Fed.Cir.2001).

See also *Adams v. United States*, 65 Fed.Cl. 217, 225 (U.S.Fed.Cl. 2005).

In *Zavislak v. United States*, 29 Fed.Cl. 525, 528-529, (U.S.Fed.Cl.1993), to wit:

> Indeed, if a **statute is clear and unambiguous** on its face, **"that is the end of the matter, for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress."** *Sullivan v. Stroop,* 496 U.S. 478, 480, 110 S.Ct. 2499, 2502, 110 L.Ed.2d 438 (1990) (quoting *K–Mart Corp. v. Cartier, Inc.,* 486 U.S. 281, 108 S.Ct. 1811, 100 L.Ed.2d 313 (1988)); *see, e.g., Consumer Prod. Safety Comm'n v. GTE Sylvania, Inc.,* 447 U.S. 102, 108, 100 S.Ct. 2051, 2056, 64 L.Ed.2d 766 (1980); *Darsigny v. Office of Personnel Management,* 787 F.2d 1555, 1557 (Fed.Cir.1986). However, when a statute can be read in more than one way, or when a statute is ambiguous on its face, **courts will resort to the legislative history to provide a meaning consistent with what Congress intended.** *Patterson v. Shumate,* 504 U.S. 753, 761, 112 S.Ct. 2242, 2248, 119 L.Ed.2d 519 (1992) (**"courts appropriately may refer to a statute's legislative history to resolve statutory ambiguity**"); *Toibb v. Radloff,* 501 U.S. 157, ——, 111 S.Ct. 2197, 2200, 115 L.Ed.2d 145 (1991) (**"we first look to the statutory language and then to the legislative history if the statutory language is unclear**"); *Blum v. Stenson,* 465 U.S. 886, 104 S.Ct. 1541, 79 L.Ed.2d 891 (1984).

In *Osage Tribe of Indians of Oklahoma v. United States*, 68 Fed.Cl. 322 (U.S.Fed.Cl. 2005), to wit:

> It is a cardinal rule of statutory construction that **"no clause, sentence, or word shall be superfluous, void, or insignificant."** *TRW Inc. v. Andrews,* 534 U.S. 19,

31, 122 S.Ct. 441, 151 L.Ed.2d 339 (2001) (quoting *Duncan v. Walker,* 533 U.S. 167, 174, 121 S.Ct. 2120, 150 L.Ed.2d 251 (2001)); *United States v. Menasche,* 348 U.S. 528, 538–39, 75 S.Ct. 513, 99 L.Ed. 615 (1955) (**"It is our duty to give effect, if possible, to every clause and word of a statute ...."**) (internal citations omitted); *James v. Santella,* 328 F.3d 1374, 1381 (Fed.Cir.2003) (acknowledging "**the general rule against construing a statute in a way that renders one of its parts inoperative**"); 2A *Sutherland: Statutes and Statutory Construction* § 46:06 (Norman J. Singer ed., 6th ed.2000).

b. Means is the exclusive Use of the Word(s) Defined as a Term

In *Verbie v. Morgan Stanley Smith Barney, LLC*, 148 F.Supp.3d 644, 651 (E.D.Tenn. 2015) "See 15 U.S.C. § 78u-6(a) (noting that the definition "shall apply" throughout the section); see also *Burgess v. United States*, 553 U.S. 124, 131 n. 3 (2008) (describing a definition that uses the term "means" as **exclusive** and a definition that uses that term "**includes**" as **nonexclusive**)." * * * @ 656 "This conclusion is fortified by the fact that when an exclusive definition is intended the word 'means' is employed". In *Burgess v. United States*, 553 U.S. 124, 131 n. 3 (2008) ""[T]he word 'includes' is usually a term of enlargement, and not of limitation." 2A Singer § 47:7, p. 305 (some internal quotation marks omitted). Thus "[a] term whose statutory definition declares what it 'includes' is more susceptible to extension of meaning ... than where"—as in § 802(44)—"the definition declares what a term 'means.' " Ibid. See also *Groman v. Commissioner,* 302 U.S. 82, 86 (1937) "[W]hen an exclusive definition is intended the word 'means' is employed, ... whereas here the word used is 'includes."

In Groman v. Commissioner, 302 U.S. 82, 86 (1937) "This conclusion is fortified by the fact that when an exclusive definition is intended the word 'means' is employed." See also In re Barnet, 737 F.3d 238, 248 (2nd Cir. 2013); Verbie v. Morgan Stanley Smith Barney, LLC, 148 F.Supp.3d 644, 653 (E.D.Tenn. 2015).

In United States Navy-Marine Corps Court of Military Review v. Cheney, 29 M.J. 98, 103 (C.M.A. 1989) "Where Congress intended a more **exclusive definition**, it used the word

"**means**,." In *State v. Begay*, 225 P.3d 108, 111 (App.Ct.Ore. 2010). In *Berman v. Neo@Ogilvy LLC*, 801 F.3d 145, 156 (2nd Cir. 2015) *see also United States v. DiCristina,* 726 F.3d 92, 99 (2d Cir.2013) (quoting *Groman v. Commissioner,* 302 U.S. 82, 86 (1937) ("When an **exclusive definition is intended the words means is employed**.")). See also *Conn. Nat'l Bank v. Germain,* 503 U.S. 249, 253–54, (1992) ("We have stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there.") * * * "[W]hen an **exclusive definition is intended the word 'means' is employed....")"

In *Haeger Potteries v. Gilner Potteries,* 123 F.Supp. 261, 267-268 (S.D.Cal. 1954) "Use of the phrase 'shall mean and include' indicates that the **statutory definition** was not intended to be restrictive or **exclusive**. Athens Lodge No. 70 v. Wilson, 1953, 117 Cal.App.2d 322, 255 P.2d 482."

In *Stenberg v. Carhart,* 530 U.S. 914, 942 (2000), to wit:

> **When a statute includes an explicit definition, we must follow that definition, even if it varies from that term's ordinary meaning**. *Meese v. Keene,* 481 U.S. 465, 484–485, 107 S.Ct. 1862, 95 L.Ed.2d 415 (1987) ("**It is axiomatic that the statutory definition of the term excludes unstated meanings of that term**"); *Colautti v. Franklin,* 439 U.S., at 392–393, n. 10, 99 S.Ct. 675 ("**As a rule, 'a definition which declares what a term "means" ... excludes any meaning that is not stated'** "); *Western Union Telegraph Co. v. Lenroot,* 323 U.S. 490, 502, 65 S.Ct. 335, 89 L.Ed. 414 (1945); *Fox v. Standard Oil Co. of N. J.,* 294 U.S. 87, 95–96, 55 S.Ct. 333, 79 L.Ed. 780 (1935) (Cardozo, J.)

See also *Burgess v. United States*, 553 U.S. 124, 130 (2008) citing *Colautti, ibid*; *McNamara v. Nomeco Bldg. Specialties, Inc.,* 26 F.Supp.2d 1168, 1174 (D.Minn. 1998) " In ascertaining the Intent of Congress from a plain reading of a statute, it is fundamental that " 'a statute should be interpreted so as not to render one part inoperative.' " *Mountain States Tel & Tel. Co. v. Pueblo of Santa Ana,* 472 U.S. 237, 249, (1985), quoting *Colautti v. Franklin,* 439 U.S. 379, 392 (1979).

In *Colautti v. Franklin*, 439 U.S. 392 n10 (1979) "**As a rule, 'a definition which declares what a term "means". . . excludes any meaning that is not stated'.**"

In *Western Union Telegraph Co. v. Lenroot,* 323 U.S. 490, 502, (1945) "Of course statutory definitions of terms used therein prevail over colloquial meanings."

In *Fox v. Standard Oil Co. of New Jersey*, 294 U.S. 87, 95 (1935) "In such circumstances definition by the average man or even by the ordinary dictionary with its studies enumeration of subtle shades of meanings is not a substitute for the definition set before us by the law makers with instructions to apply it to the exclusion of all others." In *Price v. Commissioner of Revenue*, 1989 WL 158198, *3 (Minn.Tax Ct. 1989) "Moreover, where a statutory definition begins by stating what a defined term "means" rather than "includes," the definition excludes any meaning not specifically stated. *Colautti v. Franklin,* 439 U.S. 379, n. 10, (1979); *Meese v. Keene,* 481 U.S. 465, (1987)."

c. Howell, Gast and Berry are Deemed to Know the Law.

Howell, Gast and Berry are deemed to know the law or where to look it up, which is evidenced in this Habeas they either don't know it, refuse to look it up or are using and obfuscating the Laws of the United States to perpetuate the CON.

AS pronounced in *Inb Groh v. Ramirez*, 540 U.S. 551, 563, 564 (2004) "If the law was clearly established . . . a reasonably competent public official should know the law governing his conduct." Citing *Harlow v. Fitzgerald*, 457 U.S. 800, 818-819 (1982); *State of Ohio v. Davis*, 584 N.E.2d 1192, 1196 (Sup.Ct. Ohio 1992) "**Judges**, unlike juries, **are presumed to know the law**."; *Leary v. Gledhill*, 84 A.2d 725, 728 (Sup.Ct. NJ 1951) "A court will in general take judicial notice of and apply the law of its own jurisdiction without pleading or proof thereof, the judges being deemed to know the law or at least where it is to be found."

In *Cannon v. University of* Chicago, 441 U.S. 677, 696-697 (1979)s "**It is always appropriate to assume that our elected representatives, like other citizens, know the law.**" In *Traynor v. Trunage*, 485 U.S. 535, 546 (1988) "It is always appropriate to assume that our elected representatives, like other citizens, know the law." *Cannon v. University of Chicago,* 441 U.S. 677, 696–697 (1979)." *Bowsher v. Synar*, 478 U.S. 714, 738 **FN1** (1986) "Just as it is "always appropriate to assume that our elected representatives, like other citizens, know the law," *Cannon v. University of Chicago*, 441 U.S. 677, 696–697, (1979), so too is it appropriate to assume that our elected representatives, like other citizens, will respect the law." *Offshore Logistica, Inc. Tailentire*, 477 U.S. 207, 228 (1986) "*Cannon v. University of Chicago*, 441 U.S. 677, 696–697, 99 S.Ct. 1946, 1957–1958, 60 L.Ed.2d 560 (1979) ("It is always appropriate to assume that our elected representatives, like other citizens, know the law"). In *Lowe v. S.E.C.*, 472 U.S. 181, 205 **FN50** (1985), to wit:

> "It is always appropriate to assume that our elected representatives, like other citizens, know the law." *Cannon v. University of Chicago*, 441 U.S. 677, 696-697, 99 S.Ct. 1946, 1957-58, 60 L.Ed.2d 560 (1979). Moreover, "[i]n areas where legislation might intrude on constitutional guarantees, we believe that Congress, which has always sworn to protect the Constitution, would err on the side of fundamental constitutional liberties when its legislation implicates those liberties." *Regan v. Time, Inc.*, 468 U.S. 641, 697, 104 S.Ct. 3262, 3292, 82 L.Ed.2d 487 (1984) (STEVENS, J., concurring in part and dissenting in part).

In *City of Oklahoma City v. Tuttle*, 471 U.S. 808, 836 "Because it "is always appropriate to assume that our elected representatives, like other citizens, know the law **FN10** *Cannon v. University of Chicago,* 441 U.S. 677, 696–697, 99 S.Ct. 1946, 1957–1958, 60 L.Ed.2d 560 (1979). In *Director, Office of Workers'Compensation Programs, U.S. Dept. of Labor v. Perini North River Assoc.*, 459 U.S. 297, 319 (1983) "We may We may presume "that our elected representatives, like other citizens, know the law," *Cannon v. University of Chicago*, 441 U.S. 677, 696–697, 99 S.Ct. 1946, 1957–1958, 60 L.Ed.2d 560 (1979)." In *Albernaz v. United States*,

450 U.S. 333, 341 (1981), to wit:

> But, as we have previously noted, Congress is "**predominantly a lawyer's body**," *Callanan v. United States,* 364 U.S. 587, 594, 81 S.Ct. 321, 325, 5 L.Ed.2d 312 (1961), and it is appropriate for us "**to assume that our elected representatives ... know the law.**" *Cannon v. University of Chicago*, 441 U.S. 677, 696–697, 99 S.Ct. 1946, 1957–1958, 60 L.Ed.2d 560 (1979). As a result, if anything is to be assumed from the congressional *342 silence on this point, it is that Congress was aware of the Blockburger rule and legislated with it in mind**. It is not a function of this Court to presume that "Congress was unaware of what it accomplished**...." *Railroad Retirement Bd. v. Fritz*, 449 U.S. 166, 179, 101 S.Ct. 453, 461, 66 L.Ed.2d 368 (1980).

In *Railroad Retirement Bd. v. Fritz*, 449 U.S. 166, 179 (1980) "Finally, we disagree with the District Court's conclusion that Congress was unaware of what it accomplished." In *Watt v. Alaska*, 451 U.S. 259, 284-285 (1981), to wit:

> The Court today is bothered because the literal meaning of a statute altered prevailing law.**FN8** But usually the very point of new legislation is to alter prevailing law. "**Every act is made, either for the purpose of making a change in the law, or for the purpose of better declaring the law; and its operation is not to be impeded by the mere fact that it is inconsistent with some previous enactment.**" T. Sedgwick, The Interpretation and Construction of Statutory and Constitutional Law 104 (2d ed. 1874). **Congress does not have the affirmative obligation to explain to this Court why it deems a particular enactment wise or necessary, or to demonstrate that it is aware of the consequences of its action**. **FN9** See *Harrison v. PPG Industries, Inc.*, 446 U.S. 578, 592, 100 S.Ct. 1889, 1897, 64 L.Ed.2d 525. And "[i]t *285 **is not a function of this Court to presume that 'Congress was unaware of what it accomplished.'** " Albernaz v. United States, 450 U.S. 333, 342, 101 S.Ct. 1137, 1144, 67 L.Ed.2d 275 (quoting U.S. Railroad Retirement Board v. Fritz, 449 U.S. 166, 179, 101 S.Ct. 453, 461, 66 L.Ed.2d 368.
>
> In *Garett v. United States*, 471 U.S. 773, 793-794 (1985), to wit:
>
> "[The defendants] read much into nothing. Congress cannot be expected to specifically address each issue of statutory construction which may arise. But, as we have previously noted, Congress is '**predominantly a lawyer's body,**' ... and it is appropriate for us '**to assume that our elected representatives ... know the law.**' **...** As a result if anything is to be assumed from the congressional silence on this point, it is that Congress was aware of the Blockburger rule and legislated with it in mind. It is not a function of this Court to presume that *794 'Congress was unaware of what it accomplished.' " Id., 450 U.S., at 341-342, 101 S.Ct., at 1143-44.

II. No Law Prescribes the Habeas Corpus – Understood from the Federal Constitution

No law prescribes the cases in which the Habeas Corpus shall issue as pronounced in *Ex Parte Watkins*, 28 U.S. 193, 201 (1830) to wit:

> No law of the United States prescribes the cases in which this great writ shall be issued, **nor the power of the court over the party brought up by it.** The term is used in the constitution, as one which was well understood; **and** the judicial act authorizes this court, and all the courts of the United States, **and the** judges thereof, **to issue the writ** 'for the purpose of inquiring into the cause of commitment.' **[Emphasis added]**

See *In re McDonald*, 16 F.Cas. 17, 25, 26 (D.C. Missouri 1861); *Ex parte Valiandigham*, 28 F.Cas. 874, 879 (1863); *United States v. Nourse*, 34 U.S. 8 (1835); *King v. McLean Asylum of the Massachusetts General Hospital*, 64 F. 331, 348-349 (1st Cir. 1894); *Ex parte Randolph*, 20 F.Cas. 242 (Cir. Ct. Va 1833); *In re Keeler*, 14 F.Cas. 173, 174-175 (D.C. Ark 1843); *U.S. ex rel Wheeler v. Williamson*, 28 KF.Cas. 686, 689- 690 (D.C. E.D. Pa. 1855); *Grieve v. Webb*, 158 P.2d 73, 74-76 (Sup. Ct Wa. 1945).

MacAlpine is aware of the "fact-specific" . . . "factual predicate consists only of the "vital facts" underlying the claim" . . . "facts vital to a habeas claim . . ." See *Rivas v. Fisher*, 687 F.3d 514, 534-535 (2nd Cir. 2012). This CON and total lack of "subject matter" jurisdiction and "personal jurisdiction" arising under Article III Sections 1 and 2 exercising the judicial Power of the United States in all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States ("Article III § 1 & 2").

Under the Laws of the United States of the public record of - Provide further remedial justice in the courts of the United States – 1842 Ch. 257 Sec. 1, i.e. 5 Stat. 539, *infra.*; and, under the Laws of the United States of the public record 14 Stat. 385 *et seq.*, the District Court of the United States arising under Article III shall move forward **within three days** of violations of the Federal Constitution or Laws of the United States of the Writ of Habeas Corpus.

As pronounced in *Holiday v. Johnston*, 313 U.S. 342, 350, 351 (1941) there are three mandatory procedures under the Laws of the United States of 14 Stat. 385-386 being **first** "The person to whom the writ is directed shall certify to the court, or justice, or judge before whom it is returnable the true cause of the detention of such party"; and, **second** "The person making the return shall at the same time bring the body of the party before the judge who granted the writ"; and, **third** "The court, or justice, or judge shall proceed in a summary way to determine the facts of the case, by hearing the testimony and arguments, and thereupon to dispose of the party as law and justice require." See also *Walker v. Johnston*, 312 U.S. 275, 285-87 (1941).

As held in *Jones v. United States*, 137 U.S. 202, 212, 214 (1890), *supra.*, all judges are bound *defacto or de jure*, and there is no discretion as this would be a **political question** to not abide by the Laws of the United States as enacted by Congress.

The identified Star Chamber tactics what is abhorred in our Republic is being used against MacAlpine.

This CON is complicated otherwise these Star Chamber techniques and methods would not work as efficiently as they do and requires each party (each Actor) including Howell, Gast and Berry to play their parts to intimidate, install fear and panic in people such as MacAlpine so that MacAlpine will Plea out against insurmountable odds incurring a long incarceration if he does no submit to the Star Chamber tactics.

III. Vital Facts with Memorandums in Support Thereof.

MacAlpine will be presenting Vital Facts with Memorandums in support thereof with Attachments.

A. Vital Fact One—Jurisdiction–Subject Matter.

The subject matter jurisdiction arising under Article III Sections 1 and 2 of the Courts of

the United States exercising the judicial Power of the United States in all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, the Treaties made, or which shall be made, under their Authority can be raised at any time including also the USDC where the Search Warrant originated in 1-18-mj-77 (W.D.N.C. 2018).

As held in *Owen Equipment and Erection Co. v. Kroger*, 437 U.S. 365, 374 (1978) "It is a fundamental precept that federal courts are courts of limited jurisdiction. The limits upon federal jurisdiction, whether imposed by the Constitution or by Congress, must be neither disregarded nor evaded."

In *Statterlee v. Commissioner of Internal Revenue, et al.,* 195 F.Supp.3d 327 (Dist.Cir. 2016), to wit:

> Under Rule 12(b)(1), the plaintiff bears the burden of establishing jurisdiction by a preponderance of the evidence. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992); *Shekoyan v. Sibley Int'l Corp.*, 217 F.Supp.2d 59, 63 (D.D.C.2002). Federal courts are courts of limited jurisdiction and the law presumes that "a cause lies outside this limited jurisdiction." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377, 114 S.Ct. 1673, 128 L.Ed.2d 391 (1994); *see also Gen. Motors Corp. v. EPA*, 363 F.3d 442, 448 (D.C.Cir.2004) ("As a court of limited jurisdiction, we begin, and end, with an examination of our jurisdiction."). "[B]ecause subject-matter jurisdiction is 'an Art[icle] III as well as a statutory requirement ... no action of the parties can confer subject-matter jurisdiction upon a federal court.' " *Akinseye v. District of Columbia*, 339 F.3d 970, 971 (D.C.Cir.2003), quoting *Ins. Corp. of Ir., Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702, 102 S.Ct. 2099, 72 L.Ed.2d 492 (1982).
>
> When considering a motion to dismiss for lack of jurisdiction, unlike when deciding a motion to dismiss under Rule 12(b)(6), the court "is not limited to the allegations of the complaint." *Hohri v. United States*, 782 F.2d 227, 241 (D.C.Cir.1986), *vacated on other grounds*, 482 U.S. 64, 107 S.Ct. 2246, 96 L.Ed.2d 51 (1987). *333 Rather, "a court may consider such materials outside the pleadings as it deems appropriate to resolve the question [of] whether it has jurisdiction to hear the case." *Scolaro v. D.C. Bd. of Elections & Ethics*, 104 F.Supp.2d 18, 22 (D.D.C.2000), citing *Herbert v. Nat'l Acad. of Scis.*, 974 F.2d 192, 197 (D.C.Cir.1992); *see also Jerome Stevens Pharm., Inc. v. FDA*, 402 F.3d 1249, 1253 (D.C.Cir.2005).

This Court is not exercising the judicial Power of the United States and ***this Court*** does not Arise under Article III Section 1 and 2 exercising the judicial Power of the United States in all Cases in Law and Equity, but the United States District Court ("USDC") is operating with the codified authority of as evidenced by the Public Record of **Attachment 3—*Title 28, United States Code Congressional Service, New Title 28— and Judicial Procedure Pages 1487-2174, 80th Congress—2nd Session, Epochal Legislation, West Publishing 1948*—pg. i—"augmented by expert revisers and consultants"—*New Title 28, United States Code, Judiciary and Judicial Procedure With Official Legislative History and Reviser's Notes. Page 1521—28* U.S.C § 132. Creation and composition of district courts ("Attach 1—28 U.S.C. § 132").**

This is an excerpt of **Attach 1—28 U.S.C. 132** of public record that ***this Court*** and **the Court** shall take judicial Notice thereof, to wit:

> (a) There shall be in each judicial district a district court which shall be a court of record known as the **United States District Court for the district.**
>
> (b) Each district court shall consist of the district judge or judges for the district in regular active service. Justices or judges designated or assigned shall be competent to sit as judges of the court.
>
> (c) Except as otherwise provided **by law, or rule or order of court, the judicial power of a district court** with **respect to any action, suit or proceeding may be exercised by a single judge, who may preside alone and hold a regular or special session of court at the same time other sessions are held by other judges.**
>
> ***Page 1732*—Section 132—Revised [Reviser's Notes]**—Section 132-Section Revised
>
> Based on title 28, U.S.C., 1940 ed., § 1, and section 641 of title **48, U.S.C., 1940 ed., Territories and Insular Possessions** (Apr. 30, 1900, ch. 339, § 86, 31 Stat. 158; Mar. 3, 1909, ch. 269, § 1, 35 Stat. 838; Mar. 3, 1911, ch. 231, § 1, 36 Stat. 1087; July 30, 1914, ch. 216, 38 Stat. 580; July 19, 1921, ch. 42, § 313, 42 Stat. 119; Feb. 12, 1925, ch. 220, 43 Stat. 890; Dec. 13, 1926, ch. 6, § 1, 44 Stat. 19).
>
> Section consolidates section 1 of title 28, U.S.C., 1940 ed., and section 641 of title 48, U.S.C., 1940 ed., with changes in phraseology necessary to effect the consolidation.
>
> **Subsection (c) is derived from section 641 of title 48, U.S.C., 1940 ed. [Territories and Insular Possessions], which applied only to the Territory of Hawaii. The revised section, by extending it to all districts, merely recognizes established practice.**
>
> Other portions of section 1 of title 28, U.S.C., 1940 ed., are incorporated in

sections 133 and 134 of this title. The remainder of section 641 of title 48, U.S.C., 1940 ed., is incorporated in sections 91 and 133 of this title.

As to reviser's notes, It is well settled that the reviser's notes are authoritative in interpreting the Code. See *United States v. National City Lines,* 337 U.S. 78, 81 (1949); *Stainback v. Mo Hock Ke Lok* Po, 336 U.S. 368 n. 12 (1949); *Aberdeen & Rockfish R. Co. v. Students Challenging Regulatory Agency*, 422 U.S. 289, 309 (1975); *Western Pac. R. Corp. v. Western Pac. R. Co.*, 345 U.S. 247, 254-255 (1953); *Pope v. Atlantic Coast Line R.Co.*, 345 U.S. 379, 384 (1953); *Tivoli Realty v. Paramount Pictures*, 80 F.Supp. 278, 280 (D. Del. 1950); *United States v. Thompson*, 319 F.2d 665, 669 (1963) (2nd Cir. 1963); *United States ex rel. Almeida*, 195 F.2d 815 (3rd Cir. 1952); *Adamowski v. Bard*, 193 F.2d 578, 581 (3rd Cir. 1952); *United States ex rel. Auld v. Warden of New Jersey State Penitentiary*, 187 F.2d 615 n. 1 (3rd Cir. 1951); *Lake v. New York Life Ins. Co.*, 218 F.2d 394, 398 (4th Cir. 1955); *Government Nat. Mortg. Ass/n v. Terry*, 608 F.2d 614, 618 n. 5 (5th Cir. 1979); *Acron Investments, Inc. v. Federal Sav. & Loan Ins. Corp.*, 363 F.2d 236, 240 (9th Cir. 1966); *Ragsdale v. Price*, 185 F.Supp. 263, 265 (M.D. Tenn. 1960); *Wham-O-Mfg. Co. v. Paradise Mfg. Co.*, 327 F.2d 748, 752 (9th Cir. 1964); *Stauffer et al. v. Exley*, 184 F.2d 962, 964 (9th Cir. 1950); *King v. United States*, 390 F.2d 894, 913 (Ct.Cl. 1968) [28 U.S.C. 2201-02]; *Matter of Contest of General election on Nov. 8, 1977*, 264 N.W.2d 401, 405-405 (Sup. Ct. Minn. 1978); *United States v. Klock*, 100 F.Supp. 230, 233 (N.D. N.Y. 1951); *State ex rel. v. Shoemaker*, 39 N.W.2d 524, 528 (Sup. Ct. S.D. 1949); *Glenn v. United States*, 129 F.Supp. 914, 917 (S.D. Cal. 1955).

An essential element of the "**judicial Power of the United States**" arises under Article III Section 1 "**The judicial Power of the United States**, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. . . . Section 2. The **judicial Power** shall extent to all Cases, in Law and Equity, arising under this

Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority" irrevocably precludes "The **judicial power of a district court** [28 U.S.C. § 132(c), *ibid.*] **[derived from the Territory of Hawaii, *ibid.*]** . . . may be exercised by a single judge," is merely codifying use of an "inquisition" CON. See *Lawkowski v. Spellings*, 443 F.3d 930, 941 (7th Cir. 2006) It should not be undertaken in the absence of an actual claim for this form of relief and full briefing by the parties. *See McNeil v. Wisconsin,* 501 U.S. 171, 181 n. 2, 111 S.Ct. 2204, 115 L.Ed.2d 158 (1991) (" What makes a system adversarial rather than inquisitorial is ... **the presence of a judge who does not (as an inquisitor does) conduct the factual and legal investigation himself,** but instead decides on the basis of facts and arguments pro and con adduced by the parties.").

When, as here, a matter is moot or the court otherwise lacked jurisdiction, the judgment and all actions amounts to an impermissible advisory opinion, a legal nullity, and is void. In *Williamson v. Berry*, 49 U.S. 495, 541 (1850) "But if it [the court] act without authority, its judgments and orders are a nullity; they are not voidable, but simply void . . ."; *Elliott v. Peirsol's Lessee*, 26 U.S. 328, 329 (1828) ""But if it [the court] act without authority, its judgments and orders are a nullity; they are not voidable, but simply void . . ." See also *Vallely v. Northern Fire & Marine Ins. Co.*, 254 U.S. 348, 353, 354 (1920). In *Dynes v. Hoover*, 61 U.S. 65, 66 (1857) as follows:

> The following well-settled principles of law cannot be controverted: 'That when a court has jurisdiction, it has a right to decide every question before it; and if its decision is merely *erroneous*, and not *irregular and void*, it is binding on every other court until reversed. But if the subject-matter is not within its jurisdiction, or where it appears, from the conviction itself, that they have been guilty of an excess, or have decided on matters beyond and not within their jurisdiction, all is void, and their judgments, or sentences, are regarded in law as nullities. They constitute no justification; and all persons concerned in executing such judgments, or sentences, are trespassers, and liable to an action thereon.' (Numerous case cites omitted)

B. Vital Fact Two—Personal Jurisdiction of James Edward MacAlpine.

The certified copy is self-authenticating under Evidence Rule 901(7) filed in the public record of James Edward MacAlpine's Political Status, Citizen Status and Allegiance, which is evidenced by **Attachment 4—Political Status, Citizen Status and Allegiance Recorded in Recording District 311 in Palmer, Alaska No. "2016-023-273-0" ("Attach 4—MacAlpine Status").** MacAlpine clearly is a "citizen of North Carolina" domiciled in North Carolina, being one of the several States. And further, James Edward MacAlpine is a "national of the United States" as codified in U.S.C. § 1101(23)(B) "a person who, though not a citizen of the United States, owes permanent allegiance to the United States" remembering that any person that claims to be a "citizen of the United States" should be able to prove it as under 18 U.S.C. § 911 as it is felony to claim to be a "citizen of the United States" unless a person can prove it with recognized evidence.

As further, MacAlpine evidences his political status exercising his rights of suffrage and the elective franchise secured to "citizens of North Carolina" being **Attachment 5—Voter Registration in North Carolina as a "citizen of North Carolina" ("Attach 5—Voter Registration")**; and not, as a "citizen of the United States."

C. Vital Fact Three— Reasons for the "Great Writ, being the common-law Writ of Habeas Corpus Ad Subjiciendum

In the adjudged decision of the Supreme Court of the United States in *Preiser v. Rodriguez et al.*, 411 U.S. 475, 485-487 (1973) the reasons for the "Great Writ" are pronounced, to wit:

> At 485 - But when the words 'habeas corpus' are used alone, they have been considered a generic term understood to refer to **the common-law writ of habeas corpus ad subjiciendum,** which was the form termed the 'great writ.' *Ex parte Bollman*, 4 Cranch 75, 95, 2 L.Ed. 554 (1807).
>
> * * *

At 485-486 - The original view of a habeas corpus attack upon detention under a judicial order was a limited one. The relevant inquiry was confined to determining simply whether or not the committing court **had been possessed of jurisdiction**. E.g., *Ex parte Kearney, 7 W*heat. 38, 5 L.Ed. 391 (1822); *Ex parte Watkins*, 3 Pet. 193, 7 L.Ed. 650 (1830). But, over the years, the writ of habeas corpus evolved as a remedy available to effect discharge from any confinement contrary to the Constitution or fundamental law, even though imposed pursuant to conviction by a court of competent jurisdiction. See *Ex parte La*nge, 18 Wall. 163, 21 L.Ed. 872 (1874); *Ex parte Siebold,* 100 U.S. 371, 25 L.Ed. 717 (1880); *Ex parte Wilson*, 114 U.S. 417, 5 S.Ct. 935, 29 L.Ed. 89 (1885); *Moore v. Dempse*y, 261 U.S. 86, 43 S.Ct. 265, 67 L.Ed. 543 (1923); *486 *Johnson v. Zerbst*, 304 U.S. 458, 58 S.Ct. 1019, 82 L.Ed. 1461 (1938); and *Waley v. Johnston*, 316 U.S. 101, 62 S.Ct. 964, 86 L.Ed. 1302 (1942). See also *Fay v. Noia*, supra, at 405--409 of 372 U.S., 83 S.Ct. at 830--832 and cases cited at 409 n. 17, 83 S.Ct. at 832. Thus, whether the petitioner's challenge to his custody is that the statute under which he stands convicted is unconstitutional, as in *Ex parte Siebold*, supra; that he has been imprisoned prior to trial on account of a defective indictment against him, as in *Ex parte Royall*, 117 U.S. 241, 6 S.Ct. 734, 29 L.Ed. 868 (1886); that he is unlawfully confined in the wrong institution, as in *In re Bonner*, 151 U.S. 242, 14 S.Ct. 323, 38 L.Ed. 149 (1894), and *Humphrey v. Cady*, 405 U.S. 504, 92 S.Ct. 1048, 31 L.Ed.2d 394 (1972); that he was denied his constitutional rights at trial, as in *Johnson v. Zerbst*, supra; that his guilty plea was invalid, as in *Von Moltke v. Gillies*, 332 U.S. 708, 68 S.Ct. 316, 92 L.Ed. 309 (1948); that he is being unlawfully detained by the Executive or the military, as in *Parisi v. Davidson*, 405 U.S. 34, 92 S.Ct. 815, 31 L.Ed.2d 17 (1972); or that his parole was unlawfully revoked, causing him to be reincarcerated in prison, as in *Morrissey v. Brewer*, 408 U.S. 471, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972)--in each case his grievance is that he is being unlawfully subjected to physical restraint, and in each case habeas corpus has been accepted as the specific instrument to obtain release from such confinement. [FN7]

FN7. It was not until quite recently that habeas corpus was made available to challenge less obvious restraints. In 1963, the Court held that a prisoner released on parole from immediate physical confinement was nonetheless sufficiently restrained in his freedom as to be in custody for purposes of federal habeas corpus. *Jones v. Cunningham,* 371 U.S. 236, 83 S.Ct. 373, 9 L.Ed. 285. In *Carafas v. LaVallee*, 391 U.S. 234, 88 S.Ct. 1556, 20 L.Ed.2d 554 (1968), the **Court for the first time decided that once habeas corpus jurisdiction has attached**, it is not defeated by the subsequent release of the prisoner. And just this Term, in *Hensley v. Municipal Court*, 411 U.S. 345, 93 S.Ct. 1571, 36 L.Ed.2d 294 (1973), we held that a person, who, after conviction, is released on bail or on his own recognizance, is 'in custody' within the meaning of the federal habeas corpus statute. Put those cases marked no more than a logical extension of the traditional meaning and purpose of habeas corpus--to effect release from illegal custody.

* * *

At 487 - For recent cases have established that habeas corpus relief is not limited

> to immediate release from illegal custody, **but that the writ is available as well to attack future confinement and obtain future releases**. In *Peyton v. Rowe*, 391 U.S. 54, 88 S.Ct. 1549, 20 L.Ed.2d 426 (1968), the Court held that a prisoner may attack on habeas the second of two consecutive sentences while still serving the first. The Court pointed out that the federal habeas corpus statute 'does not deny the federal courts power to fashion appropriate relief other than immediate release. Since 1874, the habeas corpus statute has directed the courts to determine the facts and dispose of the case summarily, 'as law and justice require.' Rev.Stat. s 761 (1874), superseded by 28 U.S.C. s 2243.' Id., at 66--67, 88 S.Ct., at 1556. See also *Walker v. Wainwright*, 390 U.S. 335, 88 S.Ct. 962, 19 L.Ed.2d 1215 (1968); *Carafas v. LaVallee*, 391 U.S. 234, 239, 88 S.Ct. 1556, 20 L.Ed.2d 554 (1968); *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 93 S.Ct. 1123, 35 L.Ed.2d 443 (1973). [Emphasis added]

a. Habeas Is For Future Confinement

Gast has stated as a FACT that MacAlpine will be indicted; and further, Berry got the Search and Seizure on the conclusion of **already committed Crimes** and therein the Seizure of the Fruits of the already committed Crimes; and then, this is coupled with "Target Letter" for *mere* "Investigation."

After the execution of the Search and Seizure Warrant and the "Target Letter" Gast makes it overly clear in the July 5th, 2018 between MacAlpine and Gast that MacAlpine will be indicted but also the purpose of the time from the "Target Letter"to time before the Grand Jury requirement of MacAlpine's appearance August 7th, 2018 is to negotiate a Plea Deal under the fear and panic caused by the execution of the Search and Seizure Warrant.

And further, Gast neglects to disclose that the evidence of the already committed crimes by MacAlpine will not doubt be submitted during the Grand Jury. MacAlpine relies upon *Preiser v. Rodriguez*, 93 S.Ct. 1827, 1835 (1973) "[T]he writ is available as well to attack future confinement and obtain future releases. *Peyton v. Rowe*, 391 U.S. 54 (1968) conflated with the Star Chamber techniques evidenced in the conversation of Gast Evidenced by **Attach 3—Gast Record**, *infra.* with the Search and Seizure Warrant being evidence of Crimes by MacAlpine, the

Seizure of the fruits of the Crimes and then using this to present to the Grand Jury will stack the odds of an Indictment of MacAlpine by the use of subornation of perjury by witnesses withholding "term" definitions of which in Title 26 in excess of eight hundred-fifty (850).

D. Vital Fact Four—Our System of Government in These United States Abhors the Star Chamber and it Techniques.

The abhorrence of the *cruel trilemma* is clearly prohibited as evidenced in *Couch v. United States*, 409 U.S. 322, 327-328 (1973), to wit:

> **The importance of preserving inviolate the privilege against compulsory self-incrimination has often been stated by this Court and need not be elaborated.** *Counselman v. Hitchcock*, 142 U.S. 547, 12 S.Ct. 195, 35 L.Ed. 1110 (1892); *Malloy v. Hogan*, 378 U.S. 1, 84 S.Ct. 1489, 12 L.Ed.2d 653 (1964); *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed. 694 (1966). By its very nature, the privilege is an intimate and personal one. It respects a private inner sanctum of individual feeling and thought and proscribes state intrusion to extract self-condemnation. **Historically, the privilege sprang from an abhorrence of governmental assault against the single individual accused of crime and the temptation on the part of the State to resort to the expedient of compelling incriminating evidence from one's own mouth.** *United States v. White*, 322 U.S. 694, 698, 64 S.Ct. 1248, 1251, 88 L.Ed. 1542 (1944). **The Court has thought the privilege necessary to prevent any 'recurrence of the Inquisition and the Star chamber, even if not in their stark brutality,'** *Ullmann v. United States*, 350 U.S. 422, 428, 76 S.Ct. 497, 501, 100 L.Ed. 511 (1956).
>
> In *Murphy v. Waterfront Commission of New York Harbor*, 378 U.S. 52, 55, 84 S.Ct. 1594, 1596, 12 L.Ed.2d 678 (1964), the Court articulated the policies and purposes of the privilege:
>
> **'(O)ur unwillingness to subject those suspected of** crime to the **cruel trilemma of self-accusation, perjury or contempt**; our preference for an **accusatorial rather than an inquisitorial system of criminal justice**; our fear that self-incriminating statements will be elicited by inhumane treatment and abuses; our sense of fair play which dictates '**a fair state-individual balance by requiring the government . . . in its contest with the individual to shoulder the entire load,' . . . our respect for the inviolability of the human personality and of the right of each individual 'to a private enclave where he may lead a private life' . . .'**

E. Vital Fact Five—Constitutional Remedy—A bona fide Preliminary Examination

Our Constitutional Court System is **adversarial** and not **Inquisitorial** and the

Constitutional Procedure before going to a Grand Jury is to have the Preliminary Examination wherein the "**probable Cause**" will be determined by an "**independent Judge** of the United States."

a. Inquisitions versus Adversarial

In *Laskowski v. Spellingings*, 443 F.3d 930, 941 (7th Cir. 2006), wherein the Seventh Circuit distinguishes the difference between a adversarial system and an inquisitorial system concerning plaintiff taxpayers with an inquisitor, to wit:

> It should not be undertaken in the absence of an actual claim for this form of relief and full briefing by the parties. *See McNeil v. Wisconsin,* 501 U.S. 171, 181 n. 2, 111 S.Ct. 2204, 115 L.Ed.2d 158 (1991) (" **What makes a system adversarial rather than inquisitorial** is ... the **presence of a judge who does not (as an inquisitor does) conduct the factual and legal investigation himself**, but instead **decides on the basis of facts and arguments pro and con adduced by the parties**.").

In *Miller v. Fenton*, 374 U.S. 104, 110 (1985) "[T]he court's analysis has consistently been animated by the view that "ours is a accusatorial and not an inquisitorial system. *Roberts v. Richmond*, 385 U.S. 534, 541 (1961)."

In *Rogers .v Richmond*, 365 U.S. 534, 540-541, to wit:

> Our decisions under that Amendment have made clear that convictions following the admission into evidence of confessions which are involuntary, i.e., the product of coercion, either physical or psychological, cannot stand. This is so not because such confessions are unlikely to be ***541** true but because the methods used to extract them offend an underlying principle in the enforcement of our criminal law: **that ours is an accusatorial and not an inquisitorial system**—a system in which the State must establish guilt by evidence independently and freely secured and may not by coercion prove its charge against an accused out of his own mouth. See *Chambers v. State of Florida*, 309 U.S. 227, 60 S.Ct. 472, 84 L.Ed. 716; *Lisenba v. People of State of California*, 314 U.S. 219, 236, 62 S.Ct. 280, 289, 86 L.Ed. 166; *Rochin v. People of California,* 342 U.S. 165, 172—174, 72 S.Ct. 205, 209—210, 96 L.Ed. 183; *Spano v. People of State of New York*, 360 U.S. 315, 320—321, 79 S.Ct. 1202, 1205—1206, 3 L.Ed.2d 1265; *Blackburn v. State of Alabama*, 361 U.S. 199, 206—207, 80 S.Ct. 274, 279—280, 4 L.Ed.2d 242. And see *Watts v. State of Indiana*, 338 U.S. 49, 54—55, 69 S.Ct. 1347, 1350, 1357, 93 L.Ed. 1801. To be sure, confessions cruelly extorted may be and have been, to an unascertained extent, found to be untrustworthy. But the constitutional

principle of excluding confessions that are not voluntary does not rest on this consideration. Indeed, in many of the cases in which the command of the Due Process Clause has compelled us to reverse state convictions involving the use of confessions obtained by impermissible methods, independent corroborating evidence left little doubt of the truth of what the defendant had confessed. Despite such verification, confessions were found to be the product of constitutionally impermissible methods in their inducement. Since a defendant had been subjected to pressures to which, under our accusatorial system, an accused should not be subjected, we were constrained to find that the procedures leading to his conviction had failed to afford him that due process of law which the Fourteenth Amendment guarantees.

In *McNeil v. Wisconsin*, 501 U.S. 171, 181 n.2 (1991), to wit:

What makes a system **adversarial rather than inquisitorial** is not the presence of counsel, much less the presence of counsel where the defendant has not requested it; but rather, the presence of a judge who does not (as an **inquisitor does) conduct the factual and legal investigation himself,** but instead decides on the basis of facts and arguments pro and con adduced by the parties.

See also *In re United Air Lines, Inc.,* 438 F.3d 720, 738 (7th Cir. 2006); *Sanchez-Liamas v. Oregon*, 548 U.S. 331, 357 (2006); *United States v. Loughner*, 672 F.3d 731, 773 (9th Cir. 2012), to wit:

As he recognized, "[w]hat makes a system adversarial rather than inquisitorial is not the presence of counsel ... but rather, the presence of a judge who does not (as an inquisitor does) conduct the factual and legal investigation himself, but instead decides on the basis of facts and arguments pro and con adduced by the parties." *McNeil v. Wisconsin,* 501 U.S. 171, 181, n. 2, 111 S.Ct. 2204, 115 L.Ed.2d 158 (1991). In Loughner's *Harper* hearings, the **presiding psychiatrist**, Dr. Tomelleri, **acted as an inquisitor.**

In *Dietrz v. Blould*, 794 F.3d 1093,1102, 1103 (9th Cir. 2015), to wit:

Our system of justice is an adversarial one. "What makes a system adversarial rather than inquisitorial is not the presence of counsel," but "the presence of a judge who does not (as an inquisitor does) conduct the factual and legal investigation himself, but instead decides on the bases of facts and arguments pro and con adduced by the parties." *McNeil v. Wisconsin,* 501 U.S. 171, 181 n. 2, 111 S.Ct. 2204, 115 L.Ed.2d 158 (1991). Consistent with this principle, our court has never required district court judges develop—**by interrogation of witnesses—the record on which they render judgments; instead, we require district court judges to make specific findings based on the evidence that the parties place in the record**.

In *United States v. Bendolph*, 409 F.3d 155, 172 (3rd Cir. 2005), to wit:

Underlying the *Scott* and *Nardi* decisions is the rule that generally it is not appropriate for a court to *sua sponte* raise non-jurisdictional defenses not raised by the parties. *See Acosta v. Artuz,* 221 F.3d 117, 122 (2d Cir.2000) ("Generally, courts should not raise *sua sponte* nonjurisdictional defenses not raised by the parties."); *cf. Zelson v. Thomforde,* 412 F.2d 56, 58 (3d Cir.1969) (**holding that a court may not raise the defense of lack of personal jurisdiction—a non-jurisdictional defense because it does not concern the power of the court to entertain the suit—once the defendant has waived the issue by appearing**). This rule exists because ours is an adversarial system, which relies on advocacy by trained counsel. *Cf. United States v. Burke,* 504 U.S. 229, 246, 112 S.Ct. 1867, 119 L.Ed.2d 34 (1992) (Scalia, J., concurring) ("The rule that points of law not argued will not be considered is more than just a prudential rule of convenience; its observance, at least in the vast majority of cases, **distinguishes our adversary system of justice from the inquisitorial one**."). In an adversarial system, it is not for the courts to bring to light the best arguments for either side; that responsibility is left to the parties themselves. *McNeil v. Wisconsin,* 501 U.S. 171, 181 n. 2, 111 S.Ct. 2204, 115 L.Ed.2d 158 (1991) ("What makes a system adversarial rather than inquisitorial is ... the presence of a judge who does not (as an inquisitor does) conduct the factual and legal investigation himself, but instead decides on the basis of facts and arguments pro and con *adduced by the parties.*") (emphasis added). As the Supreme Court has explained, "[t]he determination of what may be useful to the defense can properly and effectively be made only by an advocate." *Dennis v. United States,* 384 U.S. 855, 875, 86 S.Ct. 1840, 16 L.Ed.2d 973 (1966).

In *Brown v. United States*, 2011 WL 2470732, *2 (E.D. N.C. 2011), to wit:

The IRS's " 'summons power should ... be liberally construed in light of the purposes it serves.' " *Uhrig v. United States,* 592 F.Supp. 349, 352 (4th Cir.1984) (quoting *Godwin v. United States,* 564 F.Supp. 1209, 1212 (D.Del.1983)). As noted above, the IRS possesses the "**power of inquisition**" to investigate possible **unpaid tax liabilities, and its inquisitory powers need not be supported by probable cause that wrongdoing has occurred**. *Powell,* 379 U.S. at 57; *see also United States v. Bisceglia,* 420 U.S. 141, 146 (1975) ("**The purpose of the [summons] statutes is not to accuse, but to inquire**."). **Although a court will not enforce a summons that appears to be a groundless fishing expedition through taxpayer records, the IRS need only convince the court that it "has a 'realistic expectation rather than an idle hope that something may be discovered.'** " *United States v. Richards,* 631 F.2d 341, 345 (4th Cir.1980) (quoting *United States v. Harrington,* 388 F.2d 520, 524 (2d Cir.1968)). "This standard generally will be satisfied where the summons pertains to '**a legitimate investigation of an ascertainable target.**' " *United States v. O'Shea,* 662 F.Supp.2d 535, 541 (S.D.W.Va.2009) (quoting *Tiffany Fine Arts, Inc. v. United States,* 469 U.S. 310, 320 (1985)). "**Provided that the four good faith elements are satisfied, no greater justification is required**." *Id.*

In *United States v. Central National Bank*, 1980 WL 1515m •7 *(N.D. Ohio 1980), to wit:

> The teaching of *Powell* militates against approval of the Magistrate's reasoning and result. **The taxpayer in *Powell*,** who had previously been examined by the IRS, challenged a summons directed at tax years as to which, unless fraud was proved, the statute of limitations had run. The **taxpayer** asserted that the IRS should bear the burden of showing a basis for suspecting fraud as a prerequisite to the enforcement of the summons, relying on 26 U. S. C. § 7605(b), which precludes "unnecessary examination or investigations." The Court firmly rejected this argument [FN8] and ruled that probable cause need not be shown to obtain enforcement of a section 7602 summons.
>
> FN8. It has the **power of inquisition**, if one chooses to call it that, **which is not derived from the judicial function**. It is more analogous to the Grand Jury, which does not depend on a case or controversy for power to get evidence but can investigate merely on the suspicion that the law is being violated, or even just because it wants assurance that it is not. [*United States v.* Powell] 379 U. S. at 57. This analogy further supports the court's conclusion that inquiry into the basis for an IRS investigation should not be allowed as a matter of course. See *United States v. Newman, supra,* 441 F. 2d at 174-74.

In *United States v. Newman*, 441 F.2d 165, 174 (5th Cir. 1971), to wit:

> An important factor back of this approach is of course the fact that if accusatory proceedings are begun the person concerned '**will be accorded all the traditional judicial safeguards at a subsequent adjudicative proceeding** * * *.' [*Hannah v.* Larche] 363 U.S. at 446 [1980]. And this applies in the context of an IRS summons situation as Donaldson makes clear.

In *United States v. O'Shea*, 662 F.supp.2d 535, 539 (S.C. W.Va. 2009), to wit:

> Furthermore, the IRS possesses the "**power of inquisition**" to investigate possible unpaid tax liabilities, and its **inquisitory powers** need **not be supported by probable cause that wrongdoing has occurred.** *Powell,* 379 U.S. at 57, 85 S.Ct. 248; *see also United States v. Bisceglia,* 420 U.S. 141, 146, 95 S.Ct. 915, 43 L.Ed.2d 88 (1975) ("The purpose of the [summons] statutes **is not to accuse, but to inquire.**"). If the Government meets its burden of demonstrating that the summons was issued in good faith, "**it is entitled to an enforcement order unless the taxpayer can show that the IRS is attempting to abuse the court's process.**" *Conner,* 434 F.3d at 680 (quoting *United States v. Stuart,* 489 U.S. 353, 353, 109 S.Ct. 1183, 103 L.Ed.2d 388 (1989)).
>
> *United States v. O'Shea*, 662 F.Supp.2d 535, 539 (S.D.W.Va. 2009) "[T]he IRS

possesses the "**power of inquisition**" **to investigate** possible unpaid tax liabilities . . . the purpose . . . **is not to accuse, but to inquire** . . . unless the [I am a] **taxpayer**."

a. Preliminary Examination

MacAlpine is demanding a bona fide "preliminary examination" and pursuit Federal Rules of Criminal Procedure, Rule 5.1 a "magistrate judge must conduct a preliminary hearing unless" wherein, Rule 5.1 (a)(1-5) **preclusions have not happened—yet**; and, MacAlpine is **not waving his right to a preliminary examination by an "independent judge" to make a determination of "probable cause" *before* going to a Grand Jury.**

In a bona fide Preliminary Examination: (1) the government must present the specific Charges to the Court; and, (2) the Government must have sworn testimony in support of the specifically identified Charges; and, (3) the Government witnesses can be cross-examined by the Accused; and, (4) the Accused can testify or not; and, the Accused can call a limited number of witnesses in his defense; and, any statements made by the Accused can be used against the Accused with Judge making sure that the Accused did not mis-speak; And THEN, the independent Judge makes a determination of Probable Cause whether to go send the information to a Grand Jury for Bill of Indictment or not. See Hardy v. United States, 186 U.S. 224, 228 *et seq.* (1902).

A comprehensive discussion of the "preliminary examination" is given in *United States v. Anderson*, 481 F.2d 685 (4th Cir. 1973), to wit:

> **Nor can a defendant demand a preliminary hearing after indictment**, which was the posture of the prosecution when the defendants moved for a preliminary hearing. Section 3060(e), 18 U.S.C.; Uni*ted States v. Mackey* (4th Cir. 1973) 474 F.2d 55, 57; *United States v. Farries* (3d Cir. 1972) 459 F. 2d 1057, 1061,cert. denied 409 U.S. 888, 93 S.Ct. 143, 34 L.Ed.2d 145; *United States v. Coley* (5th Cir. 1971) 441 F.2d 1299, 1301; *United States v. Chase* (4th Cir. 1967) 372 F.2d 453, 467,cert. denied 387 U.S. 907, 87 S.Ct. 1688, 18 L. Ed.2d 626; *Braxton v. Peyton* (4th Cir. 1966) 365 F.2d 563, 565,cert. denied 385 U.S. 939, 87 S.Ct. 306,

17 L.Ed.2d 218.[FN3]**The purpose of a preliminary hearing is not to provide a discovery mechanism for the defendant, though this may be a collateral or incidental benefit from the hearing, but merely to determine "whether probable cause exists to bind an accused for action by a grand jury**." *United States v. Chase*, *supra,* 372 F.2d at 467; *United States v. Mackey*, *supra,* 474 F.2d at 57; *United States v. Brumley* (10th Cir. 1972) 466 F.2d 911, 915; *cf., Ross v. Sirica* (1967) 127 U.S.App. D.C. 10, 380 F.2d 557.[FN4] **After indictment, a preliminary hearing "would be an empty ritual"**. *Barber v. United States* (4th Cir. 1944) 142 F.2d 805, 807, cert. denied 322 U.S. 741, 64 S.Ct. 1054, 88 L.Ed. 1574; *Sciortino v. Zampano* (2nd Cir. 1967) 385 F.2d 132, 133,cert. denied 390 U.S. 906, 88 S.Ct. 820, 19 L.Ed.2d 872; *United States v. Daras* (9th Cir. 1972) 462 F.2d 1361, 1362, cert. denied 409 U.S. 1046, 93 S.Ct. 545, 34 L.Ed.2d 497; *Crump v. Anderson* (1965) 122 U.S.App.D.C. 173, 352 F.2d 649, 655-656; *Dillard v. Bomar* (6th Cir. 1965) 342 F.2d 789, 790,cert. denied 382 U.S. 883, 86 S.Ct. 176, 15 L. Ed.2d 123; *Vincent v. United States* (8th Cir. 1964) 337 F.2d 891, 896,cert. denied 380 U.S. 988, 85 S.Ct. 1363, 14 L.Ed.2d 281,reh. denied 381 U.S. 947, 85 S.Ct. 1775, 14 L.Ed.2d 713.[FN5]

FN3.*See, also, Jaben v. United States* (1965) 381 U.S. 214, 220, 85 S.Ct. 1365, 1369, 14 L.Ed.2d 345,reh. den. 382 U.S. 873, 86 S.Ct. 19, 15 L.Ed.2d 114, where the Court said that, under Rule 5, Federal Rules of Criminal Procedure, a preliminary hearing was required, "*unless before the preliminary hearing is held, the grand jury supersedes the complaint procedure by returning an indictment.*" (Italics added.)

FN4. For a discussion of *Ross, see, United States v. Milano* (10th Cir. 1971) 443 F. 2d 1022, 1025,cert. denied 404 U.S. 943, 92 S.Ct. 294, 30 L.Ed.2d 258:

"Defendant relies on *Blue v. United States*, 119 U.S.App.D.C. 315, 342 F.2d 894 (1964), cert. denied, 380 U.S. 944, 85 S.Ct. 1029, 13 L.Ed.2d 964 (1965), and *Ross v. Sirica*, 127 U.S.App.D.C. 10, 380 F.2d 557 (1967), which did say that the preliminary examination also provided the defendant with discovery. But that is merely an incidental benefit-which varies widely from case to case, depending on how much evidence the government produces at this early state-and not the statutory purpose. *Blue* and *Ross* have not been followed in other circuits. *Cf. United States v. Karger*, 439 F.2d 1108 (1st Cir. 1971). Moreover, 18 U.S.C. § 3060 was enacted after both cases, and, we think, clarifies the statutory purpose."

This language is reiterated in *United States v. Brumley*, *supra* (466 F.2d at 915-916).

It has been suggested that if the preliminary hearing is expanded into a discovery proceeding, there is danger of a "trial before a trial," a procedure that would bog down the expedient administration of criminal courts. Note, Toward Effective Criminal Discovery: A Proposed Revision of Federal Rule 16, 15 Vill.L. Rev. 655 at 678 (1970).

FN5.*Cf.,* however, Nakell, Note, *supra,* at 468. "* * * Coleman [*Coleman v. Alabama,* 399 U.S. 1, 90 S.Ct. 1999, 26 L. Ed.2d 387] **could be interpreted to provide a constitutional right to a preliminary hearing * * *."** *But, cf.* concurring opinion of Justice White in *Coleman* (399 U.S. at 17-18, 90 S.Ct. 1999).

F. Vital Fact Six—Search and Seizure Warrant—Incomplete and Included a "Target Letter"

MacAlpine is unlawfully and illegally **being threatened with future incarceration** using the *cruel trilemma*[8] techniques and methods of the English Star Chamber to force MacAlpine to Plea Bargain prior the affirmed upcoming Indictment stated by Don Gast ("Gast") evidenced by **Attachment 6—Telephone Conversation Between Dr. James MacAlpine and Don Gast, Esq. Recorded on July 6th, 2018 ("Attach 6—Gast Recording").**

In **Attach 6—Gast Recording**, Pg. 5 "Yea, they don't normally serve the target with the — with the attachments. They just serve you the actual cover sheet. **But you'll be able to get that once you're indicted."** I have including the rest of the transcription as excerpts reflex the actual forgone conclusion by Gast that I will be indicted and I have no right to the Affidavit, Attachment A and Attachment B, yet **unknown to MacAlpine on the very next day the case of 1:18-mj-77 was unsealed but MacAlpine WAS not notified and copy was never sent to MacAlpine.** The Key Questions and Key Answers are in **bold** and **underlined** with **footnotes.**

A friend checked on July 30th, 2018 as someone, presumably Gast, had the Case unsealed on **July 6th, 2018, being one day after the conversation on July 5th, 2018.**

> **BY DR. MACALPINE**: Okay. All right. Now, if -- if -- let's see, okay. The -- it says there, "The copy of **Attachment A and the affidavit**," but it wasn't there.

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[8] (1) Having to incriminate himself even if innocent, (2) under do this under the penalty of perjury, and (3) or, be held in contempt of court, jailed and/or indicted as stated as a fact by Gast in **Attach 6—Gast Recording.**.

BY MR. GAST: Yeah, **they don't normally serve the target[9] with** the -- with the attachments. They just serve you with the actual cover sheet. **But you'll be able to get that once you're indicted.**[10]

BY DR. MACALPINE: Well, will — how — how do I know there was an affidavit? Is there one? Or how do I even know there was one? It says one the search warrant that it's there. It says it's attached.

BY MR. GAST: Right Yeah, again, this is why I kind of strongly **recommend you get a lawyer**. And the reason being is that you're -- you're kind of focused right now on technicalities. **I'm not suggesting the technicalities aren't important; they are**. But the -- you know, those k**inds of technicalities are things that would -- that would be properly addressed post-indictment. This target letter**[11] that you've been served with, **this is an opportunity for you to get a lawyer in order to negotiate something that perhaps might be more favorable to your interests before indictment.** And so, I'm not -- you know, the purpose of this **pre-indictment period** that **we're giving you is not to dicker over technicalities. That's not the point of it**. The **point of it is to** -- **you know, if you get a lawyer and we want to start negotiating a plea resolution,**[12] I'm happy to show him all the documents that -- **if your lawyer is concerned about technicalities I'm happy to show all those to him**. **But I'm not going to show them to you if we're not** -- **the purpose of this time period is to negotiate a plea resolution. If you don't want to negotiate a plea resolution right now**[13] **because you're concerned about technicalities, that's totally fine**. **It's just that we're going to indict you**[14] **and then we'll deal with all that after you're indicted and after you're arrested.** So it's not -- **that's not the purpose of this time period that we're building in**. And I understand that that's confusing because you don't -- you're not familiar with the process, which again is why I **strongly advise you get a lawyer**. Because like I said last week, you wouldn't want to perform surgery on yourself. I think representing yourself is not a very

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[9] No mention of the "criminal probable cause" of a crime has been committed and the fruits thereof are being seized.

[10]Forgone conclusion by Gast that I MacAlpine will be indicted – the fear and panic of the Star Chamber tactics to negotiate.

[11] No mention of the invading of MacAlpine's private Business and seizing/copying property and papers.

[12] Forgone conclusion by Gast that I MacAlpine will be indicted – the fear and panic of the Star Chamber tactics to negotiate.

[13] Forgone conclusion by Gast that I MacAlpine will be indicted – the fear and panic of the Star Chamber tactics to negotiate.

[14] **Absolute forgone Conclusion by Gast that MacAlpine will be indicted—fear and panic of the Star Chamber Tactics.**

good idea. This is all complicated territory and the law is difficult and there's lots of technicalities **that your lawyers will understand better what ones are worth pursuing and which ones are not.** But ---

BY DR. MACALPINE: **But don't I have a right as pro se to this mate**rial?

BY MR. GAST: **You don't right now because you've not been charged with anything.**

BY DR. MACALPINE: So if ---

BY MR. GAST: So that's what I'm telling you. You're misunderstanding the purpose of this next couple of weeks. **The purpose of this next few weeks is to give you an opportunity to engage in plea discussions. It's not to go through all these technicalities.** Like I said, technicalities are important and they're --and you certainly have the right to have those addressed. **But that right matures once you're indicted. You don't really have that right now.**

BY DR. MACALPINE: So I don't have -- **I don't have the right to determine what the probable cause was for this search warrant at this point**?

BY MR. GAST: I'm not going to give you legal advice because it's a conflict of interest for me to give you legal advice. So I'm not going to -- I can't answer question like that for you. That's again why you have to have a lawyer. **If you don't know the answer to those questions then you either need to find the answers out for yourself or get a lawyer that can help with those.**[15]

BY DR. MACALPINE: So if I had an attorney would you be disclosing this to him? Would you be sharing this material with him? The affidavit?

BY MR. GAST: **If you had an attorney and he was really that hooked up on that issue, I probably would**. **But your attorney would probably not be talking about those things at this stage because that's not the -- this is not the time for that -- for those issues to be discussed**.[16] Again, this is -- **you're getting an opportunity that most people don't get by getting served with a target letter. By getting served with a -- most people when they're charged with crimes, they're just indicted, arrested, and brought in, and then they get their full discovery rights and they have an initial appearance and they have arraignments and all those things. You are getting a target letter because it's**

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[15] **Evasive tactics by Gast to not acknowledge the constitutional issues of the fear and panic of using the Search and Warrant to implement the Star Chamber Tactics.**

[16] **This is why MacAlpine is not getting an Attorney as the "technical issues" of the Search and Seizure Warrant are essential elements at the time of the execution of the Search and Seizure Warrant for MacAlpine to check the veracity of this invasion and seizure of his property.**

giving you an opportunity to get a lawyer and try to work out a plea pre-indictment that is --maybe will end up being more favorable to you.[17] And not everybody gets that opportunity. And so, no, **you don't have rights to discovery, you don't have rights to certain things at this stage, because you've not been charged with a crime yet.**[18] **Anymore than anybody else who is under investigation for a crime could come and demand seeing things. Because if you've not been indicted you don't have a right to those things**.[19] Do you get the difference?

BY DR. MACALPINE: Yeah, yeah. I hear what you're saying. I'm just wondering -- so the Attachment A, the affidavit weren't there. **It seems like that's not in compliance with the search warrant though.**

BY MR. GAST: Well, again, I can't tell you legal -- give legal advice. **I can just tell you I have every confidence that the indictment is -- the search warrant rather is valid**. **And really, you know, whether it is or isn't doesn't really -- is kind of immaterial to your charges and the target letter right now**.[20] But yes, there was an attachment; you just weren't provided a copy.

BY DR. MACALPINE: Okay. **Even though the warrant said that it was attached**?

BY MR. GAST: Yes. **It was attached when the Judge signed it.**[21]

BY DR. MACALPINE: **Yeah, but I mean, the copy that I was supposed to be given doesn't have it on it so -- I'm kind of in the dark and I'm not able to defend myself or, you know, to respond properly. And another thing, it doesn't list the property to be seized. I mean, a warrant is supposed to have that on it**.

BY MR. GAST: Yeah. **That also has an attachment and that was served with the Judge** -- you know, whether or not you were given a copy, I don't know

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[17] **Absolute forgone Conclusion by Gast that MacAlpine will be indicted—fear and panic of the Star Chamber Tactics.**

[18] **Gast is giving FALSE "legal advice" which is not "discovery" but the essential elements of search and seizure Warrant demonstrate the veracity of same and not just jackbooted thugs invasion to implement the Star Chamber tactics**.

[19] **Search and Seizure Warrant has "probable cause" of MacAlpine already Guilty of Crimes.**

[20] **Immaterial? Yep, more of the Star Chamber Tactics as the Constitutional Issues are irrelevant!**

[21] **Was this an open hearing or a closed Star Chamber hearing Tactic. Why no Preliminary Examination where MacAlpine could participate? Evidently Gast was Present.**

the answer to that off the top of my head. But I take your word for it that you said you weren't. **But once you're indicted that will all be part of your discovery**. [22] **But again, I think the better use of this time is to get a lawyer so that we can begin to discuss the negotiation process. Now, if you're not wanting to negotiated, if you're wanting to simply fight it,** then that's totally fine. That's your right. We'll just talk -- we'll start talking about these things once you're **indicted.** [23]

BY DR. MACALPINE: Okay. Back in -- back in '14, I was -- there was a case filed that I was involved with. It was Case No. 1-14 NC-9, and the **plaintiff or petitioner was the United States of America**. So is this the same plaintiff or petitioner in this instant case?

BY MR. GAST: Yeah. That also has an attachment and that was served with the Judge -- you know, whether or not you were given a copy, I don't know the answer to that off the top of my head. But I take your word for it that you said you weren't. **But once you're indicted that will all be part of your discovery.**[24] But again, I think the better use of this time is to get a lawyer so that **we can begin to discuss the negotiation process.** Now, if you're not wanting to negotiate, if you're wanting to simply fight it, then that's totally fine. That's your right. We'll just talk -- **we'll start talking about these things once you're indicted**. [25]

BY MR. GAST: Well, there isn't a case right now. The --because you haven't been indicted. That again -- **this is pre-indictment negotiation time**.

BY DR. MACALPINE: Right. Well, there's a case number. There's a case number, so I'm just curious.

BY MR. GAST: Right. There's just -- there's a case number for filing purposes when there's a search warrant issued. But -- so there's not a --there's not a criminal case initiated against you yet.

BY DR. MACALPINE: Okay. So -- and ---

BY MR. GAST: That's what the target letter says, is there's one coming. So you need to -- or you ought to -- **you're advised to get a lawyer so that we can engage in plea pre-indictment negotiations**. If you can't or won't do that, or

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[22] **Forgone Conclusion again MacAlpine will be indicted.**

[23] **Forgone Conclusion again MacAlpine will be indicted**

[24] **Forgone Conclusion again MacAlpine will be indicted**

[25] **Forgone Conclusion again MacAlpine will be indicted**

BY MR. GAST: **That's what the target letter says, is there's one coming**. So you need to -- or you ought to -- **you're advised to get a lawyer so that we can engage in plea pre-indictment negotiations**. If you can't or won't do that, or don't have the desire to do that, that's fine. **But then we'll talk more when you're indicted** ---[26]

BY DR. MACALPINE: Okay.

BY MR. GAST: --- **and arrested**.

BY DR. MACALPINE: On the -- you know, on the search warrant it refers to this case, "states by an attorney for the government," on the search warrant. So **I'm presuming that the government is still the United States of America**; is that correct?

BY MR. GAST: **Yes.** [27]

BY DR. MACALPINE: Okay. All right. So **who is the counsel for the United States of America in this case**? Are -- are you the counsel?

BY MR. GAST: I'm the **prosecutor handling the case**, yes, sir.

BY DR. MACALPINE: So you would be the **counsel for the United States of America**?

BY MR. GAST: **I'm the prosecutor assigned to the case, yes.** [28]

BY DR. MACALPINE: Okay. All right. So you're saying again that if I get an attorney you will communicate with him and give him information that you're not giving me that I'm asking for; is that correct?

BY MR. GAST: Well, again, you need to talk to an attorney because you're not understanding what I'm telling you. What I'm telling you is that I can't give you legal advice and **I don't want to have plea negotiations with an unrepresented person because I think that's bad for you and bad for me.** Mostly bad for you.

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[26] **Forgone Conclusion again MacAlpine will be indicted**

[27] **Acknowledges that the "government" pressing the charges is the "United States of America" and not the "United States."**

[28] As the Plaintiff is the "**United States of America"** therein *flows a fortiori* there "shall" be a **"Counsel for the United States of America"** otherwise the "United States of America" has no standing into the Case and therein the Case would be required to be dismissed as a matter of law. Gast can't and will never admit to being the "Counsel for the United States of America" a sovereign body politic.

rights mature. [30] So it's not that I'm not willing to share things with you; it's just that now is not the time for that. And if you have a lawyer and want to earnestly discuss plea negotiations, then I will be happy to make a reverse proffer and show you and that attorney both everything that you would need to satisfy yourself that you are in **enough of a pickle that plea negotiations is something that you need to do**. Now, if you don't want to engage in those kinds of discussions right now, that's fine. But I'm not going to be showing you those things outside of that posture because it's not the time for that. **You don't have a right to it yet.**

BY DR. MACALPINE: Okay.

BY MR. GAST: **Once you're indicted you have a right to discovery**. [31] There's a Rule 16, there's a rule that tells you what you're entitled to once you're indicted. And certainly we will, of course, provide all that at that time. But agin, you're ---

BY DR. MACALPINE: Yeah, well I'm ---

BY MR. GAST: **You're putting the cart ahead of the horse**.

BY DR. MACALPINE: Yeah. I was not asking about giving it to me**. I was just saying, if I have an attorney would you speak with him pre-indictment?**

BY MR. GAST: **Yes. Yes. Because then I don't have the concerns about negotiating with an unrepresented person.** [32]

BY DR. MACALPINE: Right. Okay. All right. Hey, thanks a lot. I appreciate it. And we'll be in touch.

BY MR. GAST: Yes, sir.

(THE RECORDING OF THE ABOVE-CAPTIONED PROCEEDING WAS CONCLUDED)

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[30] **Gast giving FALSE "legal advice" again but is being used to implement the Star Chamber tactics.**

[31] **Gast giving FALSE "legal advice" again but is being used to implement the Star Chamber tactics.**

[32] **Gast has admitted that an Attorney would not be questioning the veracity of the Search and Seizure Warrant and would probably be disbarred if the Attorney would do that as the Attorney would be focused solely upon negotiating a Plea Bargain therein perpetuating the Star Chamber tactics used over and over by "prosecutors" (sic) and attorneys in tax cases.**

Berry more than once during the execution of the Search and Seizure Warrant strongly encouraged MacAlpine to hire an Attorney as that move reinforces and ensures that the Star Chamber tactics will succeed.

Gast and others unknown are using of the Star Chamber techniques by using a Search and Seizure Warrant (statutory authority being withheld also) coupled with a "Target Letter" that executed on June 29, 2018 under **Attachment 7—Search and Seizure Warrant Minus Affidavit, Attachments A and B, with a Target Letter ("Attach 7—Warrant and Target Letter")**, wherein two CID IRS agents and one City Policeman appeared at my private residence at 603 Woodlea Court asking if I wanted to do the **Attach 7—Warrant and Target Letter** the easy way or the hard way. I cooperated totally and then we proceeded to 1061 Haywood where there were approximately ten (10) unidentified plain clothes people that stayed from about 10AM until 5PM.

I asked Berry during the execution of the **Attach 7—Warrant and Target Letter** about why the Affidavit, and Attachments A and B were not included, wherein Berry denied any knowledge of why the Affidavit, and Attachments A and B were not included and suggested I contact Gast.

Berry did not mention why she was including a copy of the "**Target Letter**" and **Attach 7—Warrant and Target Letter and** did not disclose same to MacAlpine but of course this plays directly into implementing the CON by and with the Star Chamber Tactics use incomplete records **Attach 7—Warrant and Target Letter and** do not disclose the finding of "probable cause" by Berry and seizure of evidence of crime, contraband, fruits of crime, or other items illegally possessed used in committing a crime.

G. Vital Fact Seven—Berry Using "Probable Cause" with Fed. R. Criml. P. 41(c) "Evidence of a crime" Requires More Than an Affidavit.

After being denied the **Affidavit, Attachment A and Attachment B** in **Attach 5—Warrant and Target Letter** that states the limits of the Property to be Search and Seized on June 29th, 2018 by Berry during the execution of the Search Warrant; and that Berry has made a determination of "**probable cause" being not "independent" but biased**[33]**;** and then, according to conversation with Gast on July 5th, 2018[34] the **Affidavit, Attachment A and Attachment B** would only be supplied to MacAlpine if MacAlpine obtained an Attorney or after being forgone conclusion of MacAlpine being **indicted** (stated as fact more than once) after MacAlpine's appearance before the Grand Jury on August 7th, 2018.

Then magically **one day later** on **July 6th, 2018** the Case of 1:18-mj-77 (W.D.N.C.) was magically and mysteriously **unsealed** as evidenced by **Attachment 8—Docket Sheet of 1:18-mj-77, "1061 Haywood Road, Asheville, NC" Defendant, Plaintiff "USA" represented by "Don Gast" ("Attach 8—Search Warrant").** The **Defendant** is **"1061 Haywood Road, Asheville, NC"** and the "**Plaintiff**" is the "**USA**," "UNITED STATE OF AMERICA" being the "Government.[35]"

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[33] *75 U. Chi L. Rev. 1329, The Judicial Role,* 1355-1358 (2008) "Yet Fourth Amendment jurisprudence is constructed on the premise that because the police officer's job is to catch criminals, we ought not rely on the police officer to balance privacy or liberty rights against law enforcement; **the officer's balance is likely to be skewed by his institutional law enforcement role.** Instead, the Court has long relied on **independent judges** and **magistrates to make the probable cause determination that justifies a search or an arrest.** The magistrate's job description, significantly, is not to catch criminals, **but to balance privacy and law enforcement, and to issue warrants only where law enforcement outweighs privacy because there is probable cause.**

[34] See **Attach 6—Gast Recording**, *supra.*

[35] See **Attach 6—Gast Recording, Pg. 14, Lines 2-8.**

Attach 8—Search Warrant is in reality an *jura in rem* [pg. 899]; or, an *in rem* action taken directly against property as evidenced by **Attachment 9—Definition of IN REM, Blacks 4th Ed. pg. 899-901** (**"Attach 9—Blacks 4th In Rem").**

As now the unsealed Case as of **July 6th, 2018** is evidenced by **Attachment 10—Case of 1:18-mj-77, Docket Sheet 1—Application for a Search Warrant, Affidavit in Support of Search Warrant, Attachment A and Attachment B ("Attach 10—Docket 1—Affidavit w/Attach A & B")** Berry has checked "**evidence of a crime**"[36] (clothing **contraband, fruits of crime, other items illegally possessed [is checked];** and, **property designed for use, intended for use, or used in committing a crime [is checked] All unlawful and illegal also**) on the Application for the Search Warrant, but a "naked affidavit" is not "**evidence of a crime**" as held in *United States v. Warrington*, 17 F.R.D. 25, 29 (N.D.Cal. 1955), to wit:

> An affidavit is not evidence, *Vendetti v. United States,* 45 F.2d 543, 544 (9th Cir. 1930); *Vonherberg v. City of Seattle*, D.C., 20 F.2d 247; Automobile Sales Co. v. Bowles, D.C., 58 F.Supp. 469, and McClure v. United States, 48 F.Supp. 531, 98 Ct.Cl. 381, and it may not be used as evidence in this proceeding to satisfy the mandate that the Court 'receive evidence on any issue of fact.' The defendant is, therefore, obliged to support his motion by competent legal evidence produced, or adduced, in Court at the time of the hearing. If the rule were otherwise, the clear meaning of the mandate in Rule 41 would be nullified.
>
> See also *Vendetti v. United States*, 45 F.2d 543, 544 (9th Cir. 1930) **Ex Parte affidavits are not admissible in a criminal case.**; *Peters v. The United States*, 187 Ct.Cl. 63, 86 (Ct.Cl. 1969) "Even if the statements were affidavits, as the majority contends, they are still hearsay and **are inadmissible under the hearsay rule**. *McIver v. Kyger*, 16 U.S. (3 Wheat.) 53, 4 L.Ed. 332 (1818); *Allen v. United States*, 28 Ct.Cl. 141, 146 (1893); *Vendetti v. United States*, 45 F.2d 543, 544 (9th

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[36] In the copy of the Application for a Search Warrant downloaded from Pacer on July 30th, 2018 we find "The basis for the search under Fed. R. Crim. P. 41(c) is *(check one or more)*: **evidence of a crime [is checked];** and, **contraband, fruits of crime, other items illegally possessed [is checked];** and, **property designed for use, intended for use, or used in committing a crime [is checked]; a person to be arrested or person who is unlawfully restrained[IS NOT Checked].**

Cir. 1930); *3 Am.Jur.2d Advancements § 29* (1962); *V Wigmore on Evidence § 1384 (3d ed.)* (1940).

No "evidence" acceptable under the Rules of Evidence was submitted in the *Ex parte* Application for the Search and Seizure Warrant and the *ipse dixit* determination of Berry of the alleged "executive branch" of an already committed specific Crime is prohibited by a mere naked affidavit and this is a well settled, *Warrington, supra.*; therein, the Search and Seizure Warrant is unlawful and illegal as a matter of law. The criminal Search and Seizure Warrant was accompanied by the investigative "Target Letter" to use the prohibited Star Chamber techniques against MacAlpine use fear and panic to "plea bargain."

And further, the alleged Affidavit is replete with "conclusions of law," wherein Berry is not a bona fide attorney with one examples from **Attach 10—Docket 1—Affidavit w/Attach A & B, Pg. 3, 4** "I know that Title 26 United States Coe, Section 7201, makes it a crime to willfully attempt in any manner to **evade or defeat any tax** or payment thereof **imposed by Title 26**, United States Code." * * * my personal knowledge of the facts of the investigation to which this affidavit relates and information from other law enforcement officers, I respectfully submit there is probable cause that the **TARGET LOCATION** contains evidence that JAMES MACALPINE committed violations of Internal Revenue laws, more specifically, the following violations: Title 26 U.S.C. § 7201 (Willful Attempt to Evade Taxes)." Berry does not describe or identify in 26 U.S.C. § 7701 with any type of specificity within "Any person who willfully attempts in any manner to evade or defeat **any tax imposed by this title**" the type of taxes of which there are many and what "**Any tax imposed by this title" means.** See **Page 17**—*15 Mertens Law of Fed. Income Tax'n* § 55A:6 Section 7201 (tax evasion) we find the following for § 7701 with cases in support in the footnotes, with definition of in § 7701—"**Any tax imposed by this title" means the income tax, the gift tax, estate tax,[13] admissions tax,[14] excise tax,[15]**

social security and withholding tax,[16] and wagering tax.[17]"

H. Vital Fact Eight—"Federal Income Tax" that Berry States in Her Affidavit Was Clarified in Legislative History Senate Report No. 112 on the Public Salary Tax Act of 1939, 53 Stat. 574-577, referencing *Helvering v. Gerhardt*, 304 U.S. 405, 418 w/FN6 [extensive details] (1938).

Berry states in **Attach 10—Docket 1—Affidavit w/Attach A & B, pg. 3** "I am familiar with the various methods and schemes that individuals engage in to willfully evade or defeat the payment of **federal income tax,** including the concealing or underreporting of their **federal income tax . . .**" On **page 13** "any tax returns or tax documents, including individual and business **federal income tax returns . . .**"

The Public Salary Tax Act of 1939, 53 Stat 574-577, where Congress by Statute agreed that the Federal Employees would pay State Income Taxes and the State Employees would pay Federal Income Taxes and the use of "**Federal Income Tax**" was **clarified** as evidenced in **Attachment 11—*Legislative History Senate Report No. 112 on the Public Salary Act of 1939* referencing *Helvering v. Gerhardt,* 304 U.S. 405, 418 w/FN6 (1938) ("Attach 11—Sen.Rpt. 112 Public Salary Act") pg. 14,** which clarified that Title 26 is not part of the "Federal Income Tax."

In **Attachment 11—Sen.Rpt. 112 Public Salary Act, *et seq*,** Congress explains in the Legislative History on **page 14,** to wit:

> It should be noted that included in the classes of employees to whom the Commissioner may give relief under this section will be employees of the type involved in the case of *Helvering v. Therrell*, 303 U. S. 218, since the decision in the Gerhardt case **clarified and restated the basis for the liability for such persons for Federal income tax.**

Contained with the *Gerhaldt* case being "**clarified and restated basis for the liability for such person for Federal income tax,**" being in *Helvering v. Gerhardt*, 304 U.S. 405, 418 FN6 (1938), to wit:

In these cases the function has been either held or assumed to be of such a character that its performance by the state is immune from direct federal interference; **yet the individuals who personally derived profit or compensation from their employment in carrying out the function were deemed to be subject to federal income tax**. **FN6**

FN6— The **following classes of taxpayers have been held subject to federal income tax notwithstanding its possible economic burden on the state: Those who derive income or profits from their performance of state functions as independent engineering contractors**, *Metcalf & Eddy v. Mitchell*, 269 U.S. 514, 46 S.Ct. 172, 70 L.Ed. 384, **or from the resale of state bonds,** *Willcuts v. Bunn,* 282 U.S. 216, 51 S.Ct. 125, 75 L.Ed. 304, 71 A.L.R. 1260; **those engaged as lessees of the state in producing oil from state lands, the royalties from which, payable to the state, are devoted to public purposes**, *Group No. 1 Oil Corporation v. Bass*, 283 U.S. 279, 51 S.Ct. 432, 75 L.Ed. 1032; *Burnet v. A. T. Jergins Trust,* 288 U.S. 508, 53 S.Ct. 439, 77 L.Ed. 925; *Bankline Oil Co. v. Commissioner*, 303 U.S. 362, 58 S.Ct. 616, 82 L.Ed. 897, and *Helvering v. Mountain Producers Corp.*, 303 U.S. 376, 58 S.Ct. 623, 82 L.Ed. 907, both decided March 7, 1938, overruling Burnet v. Coronado Oil & Gas Co., 285 U.S. 393, 52 S.Ct. 443, 76 L.Ed. 815. **Similarly federal taxation of property transferred at death to a state or one of its municipalities was upheld in** *Snyder v. Bettman*, 190 U.S. 249, 23 S.Ct. 803, 47 L.Ed. 1035, cf. Greiner v. Lewellyn, 258 U.S. 384, 42 S.Ct. 324, 66 L.Ed. 676; **and a federal tax on the transportation of merchandise in performance of a contract to sell and deliver it to a county was sustained in** *Wheeler Lumber Bridge & Supply Co. v. United States*, 281 U.S. 572, 50 S.Ct. 419, 74 L.Ed. 1047; cf. *Indian Motocycle Co. v. United States*, 283 U.S. 570, 51 S.Ct. 601, 75 L.Ed. 1277. **A federal excise tax on corporations, measured by income, including interest received from state bonds, was upheld in** *Flint v. Stone Tracy Co.*, 220 U.S. 107, 162, 31 S.Ct. 342, 55 L.Ed. 389, Ann.Cas.1912B, 1312, et seq.; see *National Life Insurance Co. v. United States*, 277 U.S. 508, 527, 48 S.Ct. 591, 595, 72 L.Ed. 968**; compare the discussion in** *Educational Films Corp. v. Ward*, 282 U.S. 379, 389, 51 S.Ct. 170, 172, 75 L.Ed. 400, 71 A.L.R. 1226, and in *Pacific Co., Ltd., v. Johnson*, 285 U.S. 480, 490, 52 S.Ct. 424, 426, 76 L.Ed. 893.

MacAlpine is not clothed or subject to the classes clarified and restated in *Helvering v. Gerhardt*, 304 U.S. 405, 418 FN6 (1938), *supra.* of ANY "**Federal Income Tax.**"

I. Vital Fact Nine—Only "citizens of the United States" are Taxpayers as stated in Attachment 11—Sen.Rpt. 112 Public Salary Act

In the **Attachment 11—Sen.Rpt. 112 Public Salary Act** on **page 7** referencing *Gerhardt* states "**The taxpayers are citizens of the United States,**" wherein MacAlpine is not a "citizen of the United States" but is a "citizen of North Carolina"[37], domiciled in North Carolina, being one of the several States; and further, MacAlpine is a "**national of the United States**" as codified in 8 U.S.C. § 1101(23)(B) "a person who, though not a citizen of the United States, owes permanent allegiance to the United States" remembering that any person that claims to be a "citizen of the United States" must be able to prove it as under 18 U.S.C. § 911 it is felony to claim to be a "citizen of the United States" unless a person provide real substantive evidence to prove it.

J. Vital Fact Ten—Berry in the Affidavit States Facts that "I believe that evidence of violations of Title 26 USC 7201 (Evasion of Income Tax) . . . is located at the business location of JAMES E. MACALPINE, DDS."

Berry in her Affidavit; and, of course, Howell and Gast also understand that contained in 26 U.S.C. § 7201 "Any person who willfully attempts in any manner to evade or defeat **any tax imposed by this title**" that in *15 Mertens Law of Fed. Income Tax'n* § 55A:6 Section 7201 (tax evasion) we find the following for § 7201 with cases in support in the footnotes, with definition of in § 7201—"**Any tax imposed by this title" means the income tax, the gift tax, estate tax,[13] admissions tax,[14] excise tax,[15] social security and withholding tax,[16] and wagering tax.**[17]" All of these taxes are very different and unique; and, the Search Warrant does not identify the specific Crime and Criminal Tax being evaded or defeated therein **being void for vagueness as a matter of law.**

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[37] See **Attach 4—MacAlpine Status** Certified Copy of MacAlpine, *infra*, filed into the public record attached to this Habeas which is self-authenticating under Evidence Rule 901(7).

Contained in Title 26 are different Subtitles of Taxes and types of Taxes as identified in *1 Mertens law of Fed. Income Tax'n § 1:4. Internal Revenue Code and Other Tax Legislation* of which the Specific Subtitle and types of "taxes" are identified and they are different especially contained in Subtitles A, B, C, D, E or elsewhere, to wit:

> Title 26 of the United States Code contains most of the statutes concerning income, estate and gift, excise, and employment taxes. The Code is the ultimate authority for determining items of income, deduction, and tax liability. The Code is divided into nine Subtitles:
>
> **A—Income Taxes;**
>
> **B—Estate and Gift Taxes;**
>
> **C—Employment Taxes;**
>
> **D—Miscellaneous Excise Taxes;**
>
> **E—Alcohol, Tobacco and Other Excise Taxes;**
>
> F—Procedure and Administration;
>
> G—Joint Committee on Taxation;
>
> H—Financing Presidential Elections;
>
> I—Trust Fund Code.

a. "Any Tax Imposed by this Title means [Title 26]"

As a general matter, the government cannot claim a strong interest in a broad law simply because it is "easier" to write and enforce than a narrowly tailored law would be. *McCullen v. Coakley*, 134 S. Ct. 2518, 2540 (2014).

"**Any tax imposed by this Title** [Title 26]" is defined in *15 Mertens Law of Fed. Income Tax'n 55A:6. Section 7201 (tax evasion)* supported by decisions from the Courts of the United States, to wit:

> The first words of Section 7201, "**Any person**," generally mean the taxpayer **evading the tax on his return,** but it also includes an officer signing a fraudulent corporate return, **FN9** one spouse evading taxes on the income of another spouse, **FN10** an administrator of an estate evading the estate tax, **FN11** and attorneys, accountants or bookkeepers who aid or abet

the filing of a false return of another.**FN12** "**Any tax imposed by this title**" means the **income tax**, the **gift tax, estate tax, FN13 admissions tax, FN14 excise tax, FN15 social security and withholding tax, FN16** and **wagering tax. FN17.**

FN9—*U.S. v. Genser*, 582 F.2d 292, 78-2 U.S. Tax Cas. (CCH) P 9682, 2 Fed. R. Evid. Serv. 1027, 42 A.F.T.R.2d 78-5747, 49 A.L.R. Fed. 335 (3d Cir. 1978); *Currier v. U.S.*, 166 F.2d 346, 48-1 U.S. Tax Cas. (CCH) P 9191, 36 A.F.T.R. (P-H) P 775 (C.C.A. 1st Cir. 1948).

FN10—*U.S. v. Richard*, 209 F. Supp. 542, 63-1 U.S. Tax Cas. (CCH) P 9243, 11 A.F.T.R.2d 437 (D.R.I. 1962), judgment aff'd, 315 F.2d 331, 63-1 U.S. Tax Cas. (CCH) P 9376, 11 A.F.T.R.2d 1176 (1st Cir. 1963); *U.S. v. Cain*, 298 F.2d 934, 62-1 U.S. Tax Cas. (CCH) P 9226, 9 A.F.T.R.2d 795 (7th Cir. 1962).

FN11—*U.S. v. Doughty*, 460 F.2d 1360, 72-1 U.S. Tax Cas. (CCH) P 12843, 29 A.F.T.R.2d 72-1550 (7th Cir. 1972); *U.S. v. Alker*, 255 F.2d 851, 58-2 U.S. Tax Cas. (CCH) P 11801, 1 A.F.T.R.2d 2170 (3d Cir. 1958).

FN12— A person may be charged under I.R.C. § 7201 as an aider and abettor through 18 U.S.C.A. § 2, which authorizes the Government to charge an aider and abettor as a principal. This procedure, however, requires that a principal exist who also evaded and defeated the tax. See *U.S. v. Doughty*, 460 F.2d 1360, 72-1 U.S. Tax Cas. (CCH) P 12843, 29 A.F.T.R.2d 72-1550 (7th Cir. 1972). Now I.R.C. § 7206(2) specifically covers aiders and abettors "whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such **return** ...."

FN13—See *U.S. v. Doughty*, 460 F.2d 1360, 72-1 U.S. Tax Cas. (CCH) P 12843, 29 A.F.T.R.2d 72-1550 (7th Cir. 1972).

FN14—*U.S. v. Nigro*, 262 F.2d 783, 59-1 U.S. Tax Cas. (CCH) P 15213, 3 A.F.T.R.2d 1912 (3d Cir. 1959).

FN15—*U.S. v. Thompson*, 806 F.2d 1332, 86-2 U.S. Tax Cas. (CCH) P 16451, 22 Fed. R. Evid. Serv. 180, 59 A.F.T.R.2d 87-342 (7th Cir. 1986).

FN16—*Wilson v. U.S.*, 250 F.2d 312, 57-2 U.S. Tax Cas. (CCH) P 10040, 52 A.F.T.R. (P-H) P 1048 (9th Cir. 1957).

FN17—*U.S. v. Shaffer*, 291 F.2d 689, 61-2 U.S. Tax Cas. (CCH) P 15351, 7 A.F.T.R.2d 1924 (7th Cir. 1961).

Berry uses a very broad brush of many types and subtitles of "taxes" of which **seven**

specific different taxes are identified, *supra*, wherein Berry is deemed to know the law[38] and with no specific identification of the specific subtitle of "**Federal Income Tax"** and type of "Federal Income Tax" makes **Berry's Affidavit void as a matter of law.**

Lest we not forget the CON that is NOT in Title 26 but in the combination of the Social Security Act of 1935, 49 Stat. 620-648, the Public Salary Tax Act of 1939, 53 Stat 574-577 and the Buck Act in 54 Stat. 1059-1061 of 1940 enacted into positive law in 1947 in 61 Stat. 641-646.

K. Vital Fact Eleven—"UNITED STATES OF AMERICA is a sovereign body politic"

Howell, Gast and Berry will use in the USDC in the Western District of North Carolina against MacAlpine with the **Plaintiff** being the **"UNITED STATES OF AMERICA a sovereign body politic[39]" and not the "United States"** wherein the "**United States**" was the real party of interest (Bona fide Plaintiff) **from 1789 to 1913 established in the Constitution of the United States** in the "District Courts of the United States," but since the passage of the Seventeenth Amendment in 1913, the emergence of only the "**UNITED STATES OF AMERICA**" is the Plaintiff (not the **United States**")[40] which has continued since the creation of the USDC in 1948.

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[38] See Heading I, A, c, *supra.*

[39] "UNITED STATES OF AMERICA" has happened in the Past evidenced by the public records in the USDC in the **Western district of North Carolina with MacAlpine being the alleged defendant in Case 1:13-cv-53 (stated in the Complaint that "Plaintiff, United States of America is a sovereign body politic**;" 1:14-mc-9; 1:08-cr-111; and 1-12-mc-15.

[40] The "United States" is the real party of interest in only two constitutional Courts as Plaintiffs being the United States Federal Court of Claims (Rule 4) and the Federal Circuit Court of Appeals wherein the Supreme Court of the United States handles everything and should not be giving standing to the "UNITED STATES OF AMERICA" excerpt in certain specific instances.

Gast in the **Attach 6—Gast Recording** confirms that the "**government**" is the "**UNITED STATES OF AMERICA**." This "UNITED STATES OF AMERICA" claims to be a **sovereign body politic** as evidenced in the **list of public case records filed into the public Record in Palmer, Alaska** evidenced by **Attachment 12—Recording District: Palmer Record District 311, Palmer, Alaska No. "2018-013613-0" on July 03, 2018 ("Attach 12—USA Sovereign Body Politic")**.

This "UNITED STATES OF AMERICA is a sovereign body politic and the Plaintiff is further evidenced by Complaint against MacAlpine, being **Attachment 13—Complaint in Case 1:13-cv-53 (Feb02,2013 U.S.D.C. WesternDist.N.C.) ("Attach 13—Compliant USA sovereign")**, *i.e.*, **page 1 "5. Plaintiff, the United States of America, is the sovereign body politic."**

The "UNITED STATES OF AMERICA" evidenced in **Attachment 14—Docket Sheet for Case 1-14-mc-9 (USDC W.Div.N.C. 2014) ("Attach 14—Docket Sheet 1-14-mc-9")** filed in a Petition to enforce and coerce MacAlpine to file a "**federal income tax**" return in Case 1-14-mc-9 evidenced by **Attachment 15—Summons Docket 2-1 Exhibit A 2010, 2011 and 2012 ("Attach 15—Summons")**; and further,

MacAlpine submitted substantive and on-point questions to the "UNITED STATES OF AMERICA" evidenced in **Docket 4-1 Exhibit B, Part 1**, being **Attachment 15—Questions to Allen, Revenue Officer ("Allen") ("Attach 16—Questions") that the "UNITED STATES OF AMERICA;"** wherein a "Paul B. Taylor AUSA (not "Counsel for the United States of America") refused to answer.

MacAlpine on July 8th, 2014 submitted a Reply with two Attachments and supported with a Verified Affidavit evidenced by **Attachment 17—Reply ("Attach 16—Reply"),**

Attachment I—Official Record of the IRS (sic) ("Attach I—Official Record), Attachment J—Chief Counsel Notice CC-2007-005 ("Attach J—Chief Counsel Notice") and **Attachment K—Verified Affidavit of James Edward MacAlpine.**

Paul B. Taylor AUSA (sic) ("Taylor") filed on August 25th, 2014 in Docket 22 evidenced by **Attachment 18—Notice of Withdrawal of Petition to Enforce IRS Summons ("Attach 18—Withdrawal")** "The United States of America, on behalf of the Internal Revenue Service ("IRS"), hereby withdraws its Petition for Enforcement of IRS Summons filed February 25, 2014 (Court's Docket # 1). . . . /s/ Paul B. Taylor."

The Court shall take judicial Notice that some of the every same years for this alleged "criminal" activity were included in **Case 1-14-mc-9,** being 2011, 2012 and 2013 where the IRS refused to Answer the questions in **Attach 16—Questions** and chose to withdraw as evidenced **Attach 18—Withdrawal.**

Of course the IRS could not answer the questions in **Case 1-14-mc-9,** so they withdrew and now are back with forgone conclusion by Gast of indictment using Star Chamber tactics.

L. Vital Fact Twelve—There will NOT be any Appearance of the "Counsel For the United States of America"

In the past cases of MacAlpine with the "UNITED STATES OF AMERICA" in the USDC in the Western district of North Carolina, being 1:13-cv-53 (stated in the Complaint that "Plaintiff, United States of America is a sovereign body politic; in Cases 1:14-mc-9, in Case 1:08-cr-111 and Case 1-12-mc-15 there was no appearance of the "Counsel for the United States of America" therein all of those Cases are Void as a matter of law with "UNITED STATES OF AMERICA" as a Plaintiff and also including the latest 1-18-mj-77, Search Warrant with Gast allegedly the "Counsel for the United States of America" but he refused in the **Attach 6—Gast Recording** to admit same when asked directly giving an off-point answer.

No Case involving the "UNITED STATES OF AMERICA" can proceed until there is someone that will admit on the record that they are "Counsel for the United States of America" when asked to prove it in the Record.

M. Vital Fact Thirteen—Howell, Gast and Berry Understand from "Imposed by Title 26" *flows a fortiori* that there Must A "person required and to deduct and withhold any tax" in Title 26.

Howell, Gast and Berry understand that for a Crime under Laws of the United States as used by Berry in the Search Warrant using Fed. R. Crim. P. 41(c) to be committed by MacAlpine that there must be Statute of the United States with some known legal duty that requires there to be a "**person required to deduct and withhold any tax**" to exist within Title 26. The only known legal duty within Title 26 for "any person required to deduct and withhold any tax" is codified in the term "**withholding agent**" in 26 U.S.C. § 7701(a)(16) which in the past Cases of MacAlpine's no one will answer the question even though IRS Agents are required answer as held in *United States v.* Clark, 134 S.Ct. 2361,.2367-2378 (2014).

This is a denial of due process of law in that ***this Court*** in the past and numerous past IRS Officers/Agents will not identify specifically the type of **"tax imposed"** that allegedly MacAlpine is guilty of and some issue of **"required to deducted and withheld[41];" or not filing a "Return" for money that was already "required to be deducted and withheld"[42] by someone else or, of not filing a "Return" of money that**

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[41] 26 U.S.C. § 7701(a)(16)—**Withholding agent.**--The term **"withholding agent" means any person required to deduct and withhold any tax** under the provisions of **section 1441 [Nonresident alien], 1442[foreign corporation], 1443[foreign organization, or 1461[hold harmless clause].**

[42] 26 U.S.C. § 7701(a)(16)—**Withholding agent.**--The term **"withholding agent" means any person required to deduct and withhold any tax** under the provisions of **section 1441 [Nonresident alien], 1442[foreign corporation], 1443[foreign**

was not with the IRS and was not "required to be deducted and withheld.[43]

Clearly as a matter of law, MacAlpine can't file a "Return" until there is someone identified as the "known legal duty" to do one of the above.

N. Vital Fact Sixteen—the Internal Revenue Service is an Agency of the "United States of America."

MacAlpine is offering one of many documents available in the public record filed by the Department of Justice being evidenced by **Attachment 18—0-13-mc-87 (D.Minn 2013) Docket 1 ("Attach—Docket 18 IRS agency of USA") pg. 1** "The United States of America, on behalf of its agency, the Internal Revenue Service ("IRS") . . ."

IV. Remedy

MacAlpine is Petitioning **the Court** to grant this Habeas quashing Search Warrant and the returning all of property taken off site and for the IRS to destroy all copies taken.

And further, for **the Court to sanction and chastise** the use of the *cruel trilemma* Star Chamber tactics against MacAlpine using fear and panic that incurred with the invasion of my private business but then the statements of certainty by Gast has that I absolutely will be indicted. In the environment of the Deep State evidenced today, MacAlpine has real fear and panic that there is no Justice when the IRS puts a target on someone like MacAlpine.

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organization, or 1461[hold harmless clause].

[43] 26 U.S.C. § 7701(a)(16)—**Withholding agent.**--The term **"withholding agent" means any person required to deduct and withhold any tax** under the provisions of **section 1441 [Nonresident alien], 1442[foreign corporation], 1443[foreign organization, or 1461[hold harmless clause].**

Did they accomplish instilling fear and panic in MacAlpine? Absolutely as MacAlpine does not want to go to jail and especially for something of which there is no known legal duty that has application to MacAlpine.

The **"United States of America" a sovereign body politic** is not the real party of interest as since 1789 the Constitution of the United States is strictly for the Government of the United States in the territorial boundaries of the several States. This issues needs to be exposed and litigated as this is in today opposition to the reservation of Powers in the Tenth Amendment.

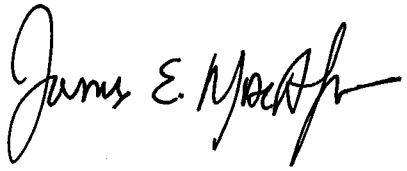
If the "United States of America" is the Plaintiff *flows a fortiori* that there shall be "Counsel for the United States of America." As Gast will not admit to being "Counsel for the United States of America" in 1-18-mj-77, therein the Search Warrant is a Fraud and must be quashed.

I have provided evidence that the USDC not arise under Article III Sections 1 and 2 and demand a constitutional Court exercising the judicial Power of the United States and not the judicial power of a district court codified in 28 U.S.C. § 132.

I have provided evidence that I am a "citizen of North Carolina" domiciled in North Carolina, being one of the several States therein I have standing for the real Habeas.

I am **demanding a "preliminary examination" in a constitutional Court BEFORE MY REQUIRED appearance before the Grand Jury next week, of whom all will be "citizens of the United States," to which I object, therein if there is known legal duty that Berry and Gast are proclaiming, then the specific Statute of the United States and the specific tax with sworn testimony supporting same can be presented in open court where MacAlpine can cross examine to flush out the truth.**

My Hand,



Verified Affidavit of James Edward

State of North Carolina)
) **ss.**
Buncombe County)

Verified Affidavit of James Edward MacAlpine

I, James Edward MacAlpine, do affirm (or swear that the facts this Habeas and this verified Affidavit are true and correct under the penalties of perjury.

1. My true name is "James Edward MacAlpine.

2. I am of the age of majority and competent to testify to the facts in the Habeas, Attachments and this verified Affidavit.

3. I have personal knowledge that there was never in an appearance of the "**Counsel for the United States of America**" in all of my cases with all of the research I have done.

4. I am a "citizen of North Carolina."

5. I am domiciled in the North Carolina, one of the several States.

6. I am not a "citizen of the United States."

7. I am a "national of the United States" that owes permanent allegiance to the United States as codified in 8 U.S.C. § 1101(22)(B) "a person who, though not a citizen of the United States, owes permanent allegiance to the United States."

8. I am not domiciled, have residence or reside in any "Federal Area" as defined in codified in 4 U.S.C. § 110.

9. ***This Court's*** alleged authority is found the public record codified in 28 U.S.C. § 132(c) exercising "**[T]he judicial power of a district court**" that is derived from the

"Territory of Hawaii" as documented in the Reviser's Notes.

10. I have never given ***this Court*** **knowingly, tacitly or by any other means "personal jurisdiction."**

11. I am proceeding forward in this instant situation under threat, duress and coercion the *cruel trilemma* of the Star Chamber Tactics.

12. I **demand a <u>Preliminary Examination</u> in a "District Court of the United States before my forced appearance in the Grand Jury on August 8th, 2018.**

13. The "**United States of America is a sovereign body politic**," which will be evidenced by a Motion with the attachment identifying one hundred eight (110) Cases in various USDC's in the public Record.

14. My Certified Copy, being **Attachment 4—"Certificate of Political Status, Citizen Status and Allegiance" is** true and correct.

15. I am not clothed with any duty or obligation of any "Federal Income Tax" as clarified in this Habeas in *Helvering v. Gerhardt*, 304 U.S. 405, 418 FN6 (1938) and Legislative History evidenced by **Attach 11—Sen.Rpt. 112 Public Salary Act.**

16. I am not clothed with any known legal duty for any taxes identified in Title 26.

17. I have not been noticed of any specific subtitle of tax in Title 26 that I have an obligation to the "United States" to pay as a "citizen of North Carolina.

18. I object to the "United States of America as a sovereign body politic" as We the People are the sovereigns with a limited delegation to one of the several States and a limited delegation to the United States with what is delegated is preserved inviolate in the Tenth Amendment.

My Hand, James E. McClain

Sworn and Subscribed before a Notary Public in and for the State of North Carolina on this 8-3-18.

My Civil Commission expires on 3-12-23.

Amanda L. Shetley
Signature of Notary Public

[SEAL]

AMANDA L SHETLEY
Notary Public - North Carolina
Madison County
My Commission Expires Mar 12, 2023